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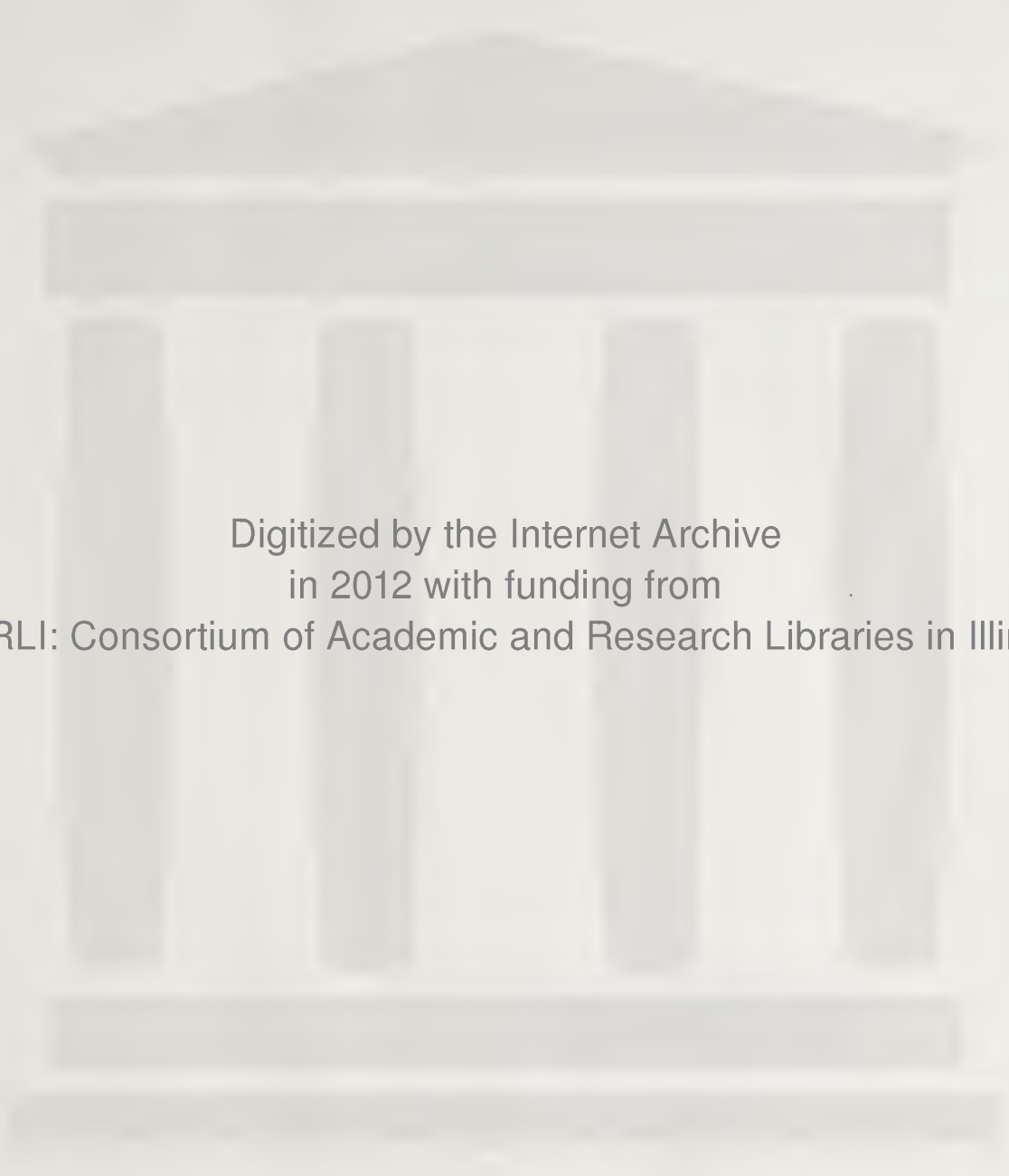
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1986 ANNUAL REPORT
OF THE
JOINT COMMITTEE ON ADMINISTRATIVE RULES

Submitted to the Members of the
General Assembly of the State of Illinois

Membership

Senator Thaddeus "Ted" S. Lechowicz, Cochairman
Representative Myron J. Olson, Cochairman
Representative Monroe Flinn, Secretary

Senator Laura K. Donahue
Representative Larry W. Hicks
Senator Emil Jones, Jr.
Senator Jeremiah E. Joyce
Senator Doris C. Karpel
Representative Ellis B. Levin
Representative Thomas J. McCracken, Jr.
Representative A. T. "Tom" McMaster
Senator Harry "Babe" Woodyard

Bruce A. Johnson, Executive Director

509 S. Sixth Street
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January 1, 1987

JOINT COMMITTEE ON ADMINISTRATIVE RULES

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HONORABLE MEMBERS OF THE 84TH GENERAL ASSEMBLY

Ladies and Gentlemen:

We hereby submit the 1986 Annual Report of the Joint Committee on Administrative Rules. As Co-Chairmen of the Joint Committee, we are happy to report the continued progress of the oversight process in Illinois.

An overview of the Joint Committee's rules review activities can be found in the following pages. Also highlighted is a summary of the Joint Committee's legislative agenda, and a description of the publications of the Committee as well as current changes to the Joint Committee's Operational Rules.

We gratefully acknowledge your continued support and assistance and we encourage all members of the General Assembly to take an active role in this vital oversight function which guarantees that the public right to know is protected through the promulgation of specific rules which are applied equally to everyone regulated. We welcome your suggestions and comments on agency rules and the development of the role of the Joint Committee. Only as each of us as elected representatives becomes concerned and involved in the oversight process, can the Joint Committee, acting on your behalf, ensure that the intent of the legislation which we pass is upheld.

Respectfully,

Senator Ted Lechowicz
Co-Chairman

Representative Myron Olson
Co-Chairman

1986 ANNUAL REPORT

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HIGHLIGHTS

The Joint Committee on Administrative Rules has the responsibility to review the rules and regulations of all State agencies. The major accomplishments of the Joint Committee during 1986 include:

- Review of 698 proposed, 87 emergency, and 33 peremptory rulemakings, the highest number of rulemakings ever reviewed by the Joint Committee.

- A successful legislation program, resulting in enactment of five public acts encompassing 23 different legislative concepts.

- Adoption of new rules governing the Joint Committee's operations.

- Compilation of a comprehensive index of all objections and recommendations issued by the Joint Committee since its inception.

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INTRODUCTION

The Joint Committee on Administrative Rules was created by the Illinois General Assembly in 1977 as a mechanism for legislative oversight of the rulemaking process in Illinois. The Illinois Administrative Procedure Act summarizes the Joint Committee's role as the "promotion of adequate and proper rules by agencies and an understanding on the part of the public respecting such rules." This provision established the Joint Committee's two major functions: (1) working with State agencies to improve the rulemaking process and agency's rules, and (2) promoting public understanding of rules and the rulemaking process.

The Joint Committee was established as a legislative support services agency by the Legislative Commission Reorganization Act of 1984. The Joint Committee's principal programs and activities include:

- Review of General Rulemakings within statutory time periods to ensure that new rulemaking proposals are within the agency's statutory authority, are legally proper, and meet the procedural requirements of the Illinois Administrative Procedure Act.
- Review of Emergency and Peremptory Rulemakings to ensure that these rules comply with the statutory requirements because these rules are not subject to the public comment period.
- Reviews of Agency Rules and Policies to determine whether agency rules have been properly promulgated, and whether the rule is unauthorized or unreasonable, or results in a serious impact upon the public.
- Five Year Review of Existing Rules to examine rules by subject area to reduce conflict and overlap between rules, and to eliminate obsolete rules.
- Public Act Review to determine the necessity for new or amendatory rulemaking in response to legislative changes.
- Legislative activities which ensure that the requirements of the Illinois Administrative Procedure Act are followed.
- Publication of Illinois Regulation, a weekly newsletter which highlights State agency rulemaking activities.

More information about these activities is included in a later section of this report.

Information about the operations of the Joint Committee, and about State agency rules and rulemakings are supplied to individual members of the General Assembly, members of the public, lobbyists, and organizations upon request. Requests include copies of rules, hearing transcripts, or status information regarding certain rules or types of rules. This information is transmitted promptly to the requesting entity.

This Annual Report has been divided into two sections and an appendix. Section One contains a narrative of the Joint Committee's activities during 1986, as well as a statistical summary of the rulemaking activities of State agencies. Section Two includes a summary of the Joint Committee drafted and sponsored legislation, as well as other pieces of legislation amending the Illinois Administrative Procedure Act, which were passed during the 1986

appropriation session of the 84th General Assembly. All Joint Committee legislation is the result of the review of State agency rules. Appendix A (pages 59-69) contains a historical overview of the Joint Committee as well as pertinent historical statistics and Appendix C (pages 97-196) contains the revised Operational Rules of the Joint Committee.

MEMBERSHIP

The Joint Committee on Administrative Rules consists of twelve members who are appointed by the legislative leadership. Membership is equally apportioned between the two houses and the two political parties. Two co-chairmen are selected by the members of the Joint Committee. The co-chairmen cannot be members of the same house or same political party. The members also select a secretary.

The members receive no compensation for their services, but are reimbursed for travel expenses. The Joint Committee maintains a full-time staff of twenty-five persons in Springfield.

Legislators who presently serve on the Joint Committee are listed on the first page of this report. Legislators who served on the Joint Committee on Administrative Rules during some part of 1986 were:

Senator Prescott E. Bloom
Representative Michael Curran
Senator Laura K. Donahue
Representative Monroe Flinn
Representative Larry W. Hicks
Senator Emil Jones, Jr.
Senator Jeremiah E. Joyce
Senator Doris C. Karpel
Senator Thaddeus "Ted" Lechowicz
Representative Ellis B. Levin
Representative Thomas J. McCracken Jr.
Representative A. T. "Tom" McMaster
Representative Myron J. Olson
Representative Sam Vinson
Senator Harry "Babe" Woodyard

Former members of the Joint Committee are:

Arthur L. Berman	Larry Leonard
Glen L. Bower	Richard Luft
Jack E. Bowers	John W. Maitland, Jr.
Woods Bowman	Lynn Martin
John Cullerton	John M. Matejek
Richard M. Daley	Roger McAuliffe
Vince Demuzio	David J. Regner
James H. Donnewald	Jim Reilly
Jim Edgar	Philip J. Rock
James Gitz	George Sangmeister
Alan J. Greiman	Frank D. Savickas
Carl E. Hawkinson	Richard A. Walsh
Douglas N. Kane	Robert C. Winchester
Richard Kelly, Jr.	Kathleen Wojcik
Bob Kustra	Harry "Bus" Yourell

REVIEW OF GENERAL RULEMAKING

State agencies proposed 698 general rulemakings during 1986, the greatest number ever. (See Table 1, pages 18-19 for a breakdown of general rulemakings by agency, and Table 12, pages 62-65 for a comparison of general rulemaking from 1978 through 1986). The Joint Committee issued 249 objections and 87 recommendations to general rules (see Table 2, pages 20-21) during the same period. The Joint Committee also issued 5 objections to existing rules (see Table 4, page 23). Review of the rules by the Joint Committee resulted in changes to the vast majority of the proposals. The changes varied from minor drafting and editing revisions to extensive, substantive rewrites of rules. This section of the report explains the general rulemaking process and the criteria used by the Joint Committee in evaluating rules. Also included is a summary of some of the general rulemakings considered by the Joint Committee in 1986.

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General Rulemaking Process

Section 3.09 of the Illinois Administrative Procedure Act defines "rule" as:

each agency statement of general applicability that implements, applies, interprets, or prescribes law or policy, but does not include (a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to persons or entitles outside the agency, (b) informal advisory rulemakings issued pursuant to Section 9, (c) intra-agency memoranda or (d) the prescription of standardized forms.

Rules must be promulgated pursuant to the Act in order to be enforced by a State agency. There are three methods for promulgating a rule.

Section 5.01 of the Act explains the general rulemaking procedure. This procedure must be used for all rules which are not (1) related solely to agency management, personnel practices, or to public property, loans or contracts, (2) an emergency rulemaking as defined by Section 5.02 of the Act, or (3) a peremptory rulemaking as defined by Section 5.03 of the Act.

Section 5.01(a) explains the "first notice," or public notice and comment requirements. Agencies must publish the text of proposed rules in the Illinois Register, a weekly publication of the Office of the Secretary of State, and accept public comments on the rulemaking for the length of time specified in the notice which must accompany the text. At least 45 days' notice of the intended rulemaking action must be given to the public. This time is called the "first notice period," and it begins on the day that the notice of general rulemaking appears in the Register. The primary purpose of the first notice period is to provide the regulated public with an opportunity to review and comment upon the rulemaking proposal.

Some agencies hold public hearings on their proposals in order to solicit comments. The Departments of Agriculture and Public Health often hold such hearings. Section 5.01 also provides that agencies must hold public hearings whenever the agency finds that a hearing would elicit public comments which might not otherwise be submitted, or if a request for a hearing is made by 25 interested persons, an association representing at least 100 persons, the Governor, the Joint Committee on Administrative Rules, or a unit of local government, and is received by the agency within 14 days after publication of the rulemaking in the Illinois Register.

After the expiration of the "first notice period," agencies are required to submit the proposed rules, along with any changes made in these rules during the first notice period, to the Joint Committee for review. Agencies submit this information in the form of a "second notice," which must include the text and location of any changes made in the rule, a final regulatory flexibility analysis which reports the effects of the rule on small businesses,

an evaluation of comments received regarding the rule during the first notice period, an analysis of the anticipated effects of the rule, the justification and rationale for the rule, and, if requested by the Joint Committee, an analysis of the economic and budgetary effects of the rule.

The Joint Committee reviews the rule based upon the criteria outlined in the Committee's Operational Rules (1 Ill. Adm. Code 220). These criteria include legal and rulemaking authority, compliance with legislative intent and statutory authority, compliance with State and federal constitutions and other laws, adequacy of standards and criteria for the exercise of discretionary powers, clarity, consideration of the economic and budgetary effects of the rule, compliance with the Regulatory Flexibility Law and the Illinois Administrative Procedure Act, and compliance with the agency's rulemaking requirements. Pursuant to these review criteria, the Joint Committee raises issues regarding the rules.

If all issues are resolved, the Joint Committee will certify no objection to the rule, which enables the agency to adopt the rule by publication of the rule in the Illinois Register and filing an official copy of the rule with the Office of the Secretary of State. If the issues are not resolved, they are presented in the form of recommendations for Joint Committee action. The types of action recommended include objection, suspension, or legislation. Table 3 (page 22) breaks down the number of objections and recommendations issued by the Joint Committee by type. If recommendations for objection are voted by the Joint Committee, they are published in the Illinois Register and the agency must respond to the objection within 90 days by modifying the rule, refusing to modify the rule, or withdrawing the rule. The response must be presented to the Joint Committee and be published in the Illinois Register. Agency responses may result in additional Joint Committee action. This action often results in an objection to an existing rule because agencies may adopt rules upon submission of a response to the Joint Committee. Agencies are also requested to respond to Joint Committee recommendations. However, responses to recommendations are published in the Illinois Register and evaluated by the Joint Committee.

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General Rulemaking in 1986

Sixty-six State agencies adopted 698 general rulemakings in 1986 (see Table 1, pages 18-19) and the Joint Committee issued 249 objections and 87 recommendations to general rulemaking during the year (see Table 2, pages 20-21). Once again, the Department of Public Aid adopted more general rules (82) than any other State agency (11.7% of the total). Other State agencies with a great deal of rulemaking activity included the Department of Rehabilitation Services (57, 8.2%), the Department of Mines and Minerals (49, 7%), the Department of Public Health (44, 6.3%), the Pollution Control Board (43, 6.2%), the Department of Conservation (33, 4.7%), the State Board of Education (30, 4.3%), and the Department of Commerce and Community Affairs (29, 4.2%).

Table 3 (page 22) breaks down the Joint Committee's objections and recommendations to general rulemakings by type. The most common objection to general rules is a violation of Section 4.02 of the Illinois Administrative Procedure Act, which requires State agencies to include precise standards in rules which implement discretionary authority. The Joint Committee issued 117 objections (47% of the total) on this basis in 1986. Two other common objections, which accounted for 30% of the total, were that the general rulemaking conflicted with or lacked statutory authorization. The most common recommendation issued in 1986, which was generally issued in conjunction with an objection based upon lack of, or conflict with, statutory authority, was that the agency seek legislation to remedy the problem. Forty-five recommendations (52% of the total) were issued on this basis. Another common recommendation (32, 37% of the total) occurred when, during the course of a review, it became apparent that additional rulemaking was necessary in order to make the program complete.

Table 4 (page 23) breaks down the Joint Committee's objections to existing rules by agency, and Table 5 (page 24) breaks down these objections by type. The Joint Committee issues objections to existing rules when an objection was issued by the Committee to the general rule, and the objection was not remedied by the agency prior to adoption of the rule.

The text of the objections and recommendations issued by the Joint Committee to general rules and rulemakings during 1986 is included in another Committee publication entitled "1986 Index of Objections and Recommendations."

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Significant General Rulemakings

Summarized in this section are several of the most important general rulemakings and Joint Committee objections and recommendations issued in 1986.

Illinois Commerce Commission

The Illinois Commerce Commission proposed rules in December, 1985, entitled "Energy Assistance" (83 Ill. Adm. Code 281), to implement the Energy Assistance Act (Public Act 84-1034, effective November 22, 1985). The rule established the Illinois Residential Affordable Payment Program (IRAPP) to enable low-income residential utility customers to heat their homes and pay no more than 12% of their monthly income to the utility or utilities that provide them with gas and electric services. The rules explain the structure of the plan that each customer must enter into, including the requirement that utilities notify customers of the program, and set forth customer default and disconnection, and late payment charge waivers provisions.

In April, 1986, the Joint Committee issued 13 objections and one recommendation to this rulemaking. The objections were based upon: (1) the Commission's improper delegation of authority, to the Department of Commerce and Community Affairs (DCCA), of the Commission's responsibility to promulgate standards for the determination of "household income" upon which eligibility for the program is based; (2) the Commission's lack of authority to restrict full-time application processing to the period between December 1 and April 30, in violation of the Energy Assistance Act; (3) the conflict between the Commission's definition of "shortfall" and how such shortfall is to be measured and paid, and the provisions of the Act; (4) the Commission's failure to include the content of the IRAPP application and failure to provide for notification of eligibility in the rules; (5) the conflict between the rule, which provides that if a customer was served by one regulated and one unregulated utility, that the total payment could not exceed 12% of income, and the Act which is silent regarding unregulated utilities; (6) the failure to provide adequate standards defining IRAPP participants' responsibilities to make a "reasonable" effort to apply for all applicable energy and weatherization assistance; (7) the failure to include adequate rules regarding proof of continuing qualifications and eligibility; (8) the conflict between the rule, which compute average residential usage on a house-by-house basis, and the Act which requires that usage be based upon average residential usage, adjusted for weather and household size; (9) the lack of clarity and precision in the rule in the usage of the term "typical residential customer." The Joint Committee also recommended that the Commission seek legislation allowing less than 12% of income to be to a regulated utility when a customer was also served by an unregulated utility.

In response to the Joint Committee's objections, the Commission indicated that it would work with DCCA to promulgate standards for the determination of "household income" (DCCA adopted rules including such standards (47 Ill. Adm. Code 100) in December, 1986. The Commission also deleted the section of the rules dealing with shortfall, refused to change the rule dealing with

application processing, added the contents of the IRAPP application to the rule, and refused to add standards regarding "reasonable" efforts to apply for energy and weatherization assistance and defined "typical residential customer." The Commission also agreed to work with DCCA to develop rules regarding proof of continuing qualifications and eligibility, and refused to change the rule regarding computation of usage. After considering the Commission's responses, the Joint Committee voted to draft and introduce legislation to amend the Energy Assistance Act to: (1) authorize the Commission to charge less than 12% of income if a participant was served by one regulated and one unregulated utility; (2) require the Commission to promulgate rules to calculate average residential usage, as required by the Act; (3) provide that energy assistance funds received on behalf of a participant will be credited to that participant's shortfall; and (4) replace the requirement that proof of continuing eligibility be provided to the utility with a requirement that proof be submitted to the administering agency.

Department on Aging

The Department on Aging proposed an amendment to "Older Americans Act Programs" (89 Ill. Adm. Code 230) in May, 1986, to change the intrastate funding formula to distribute federal and state funds to the area agencies on aging in Illinois. The result of this rulemaking was to increase the funding level for seven agencies and decrease the funding level for the remaining six agencies in Illinois. The Joint Committee objected to this amendment in November, 1986, on the bases that: (1) the Department failed to provide adequate notice to the affected public; (2) a limited "English-speaking factor" was not included in the formula, contrary to the Federal Older Americans Act; (3) the Department lacked justification for including a rural factor at 15% in the formula; (4) the Department failed to use the most up to date population statistics; and (5) the rules failed to reflect the Department's policy that the intrastate funding formula will expire on September 30, 1987. The Joint Committee also recommended that the Department review the practices of other states and, if appropriate, initiate rulemaking within six months to alter the statistical basis for the formula. The Department has not yet responded to the objections or recommendation.

Department of Revenue

The Department of Revenue proposed amendments to its "Use Tax Regulations" (86 Ill. Adm. Code 150) in March, 1986. These amendments provided that all tangible personal property purchases outside Illinois, including natural gas, were subject to Illinois use tax liability when the property was brought to and used in Illinois. In addition, the amendments also defined "retailer maintaining a place of business in this State" to include engaging in activities in Illinois which, in the retailer's state of domicile, would constitute maintaining a place of business.

In August, 1986, the Joint Committee objected to the proposed amendments because: (1) the Use Tax Act does not apply to out-of-state purchases of natural gas, and (2) the amendment failed to include adequate standards for determining a retailer's state of domicile.

In response to the Joint Committee's objections, the Department deleted the provision making out-of-state purchases of natural gas subject to the use tax

and modified the rulemaking to state that it would look to the place at which the selling activity took place for purposes of determining the retailer's state of domicile. The Joint Committee reviewed the Department's response and recommended, in December, 1986, that the Department work with the Committee to amend the Use Tax Act and the Service Use Tax Act, to which the Committee also objected in August, to clarify the definition of "retailer maintaining a place of business in Illinois."

Environmental Protection Agency

The Environmental Protection Agency proposed rules entitled "Procedures to be Followed in the Performance of Annual Inspections of Motor Vehicle Exhaust Emissions" (35 Ill. Adm. Code 276) in January, 1986, which established a program to test vehicle emissions in specified counties in the State (the Chicago metropolitan and St. Louis metropolitan areas, in particular) in order to reduce air pollution caused by motor vehicle emissions, to implement the Vehicle Emissions Inspection Law. The Joint Committee issued three objections to these rules in May, 1986, because: (1) the rules conflicted with the statutory provision which details the areas subject to testing, (2) the rules violated the incorporation by reference procedures of the Illinois Administrative Procedure Act, and (3) the rules contradict the statutory provisions relative to renewal of inspection on a yearly basis. However, in June, 1986, the Joint Committee withdrew Objection 1 (and legislation was passed which remedied the problem).

In response to the Joint Committee's remaining objections, the Agency deleted the incorporation by reference and modified the provision relative to renewal of inspection. In October, 1986, the Joint Committee reviewed the Agency's response and determined that the modification did not meet the objection. Therefore, the Committee recommended that the rules be amended to conform to the law.

Department of Commerce and Community Affairs

The Department of Commerce and Community Affairs adopted rules in October, 1985, to implement the Enterprise Zone Act ("Enterprise Zone Program," 89 Ill. Adm. Code 520). The Joint Committee issued two objections to these rules in February, 1986. The Joint Committee objected to the rules because they were vague and fail to describe the physical, economic and social characteristics of a potential enterprise zone which must be included as part of the application process, and because the rules failed to state the standards used by the Department to determine the conditions under which an enterprise zone would not be decertified despite the existence of cause for such an action. The Department modified the rule to include standards to describe the characteristics of a potential enterprise zone which must be included, however the Department refused to include the standards by which it determines not to decertify a zone despite cause for such decertification. After considering the Department's response, the Joint Committee voted to draft and introduce legislation requiring the Department to formulate standards for determining not to decertify a zone despite cause for such decertification.

Property Tax Appeal Board

The Property Tax Appeal Board proposed "Procedures" (86 Ill. Adm. Code 1910) in December, 1985. These rules provide procedures to be used by the assessment officials in determining property assessments and appeal procedures. The Joint Committee issued four objections and two recommendations to these rules in June, 1986. The objections were based upon: (1) the failure of the rule to include clear and precise standards for determining when to use a one year assessment level in determining assessments; (2) the violation of "An Act to revise the laws in relation to attorneys and counselors" by permitting the unauthorized practice of law; (3) the Board's lack of statutory authority to dismiss an appeal for failure to provide a court reporter and a copy of the transcript; and (4) the failure to include in the rule the standards used by the Board in determining when it will "eliminate such rules of evidence, practice, and procedure to the extent it considers practicable." The Joint Committee also recommended that the Board promulgate rules or procedure consistent with the statutory requirement that it "establish by rules an informal procedure for the determination of the correct assessment of property which is the subject of an appeal" and that the Board seek legislation to clarify its authority to require a contesting party to furnish a court reporter and a copy of the transcript in certain instances.

In response to the objections, the Board modified the rule to use a three year assessment level and remedied the unauthorized practice of law problem by eliminating the rule which permitted practice before the Board by non-attorneys. The Board refused to modify or withdraw the sections of the rules dealing with dismissal of an appeal due to failure to provide a court reporter and a copy of the transcript and the section dealing with the elimination of rules of evidence, practice and procedure. The Board did indicate in response to the recommendations, that it would promulgate rules of practice consistent with the statutory mandate, and that it would seek legislation to authorize the Board's practice of requiring a contesting party to furnish a court reporter in certain instances.

Department of Insurance

The Department of Insurance proposed rules entitled "Mid-Term Cancellations" (50 Ill. Adm. Code 940) in February, 1986, which included the conditions which, under the Insurance Code, a casualty policy could be cancelled in mid-term. The Joint Committee objected to the rule in August, 1986, because the Department failed to include standards for determining that lost reinsurance provided coverage for a substantial part of the underlying risk to the insurer which would permit a mid-term cancellation of insurance.

The Department refused to modify or withdraw the rule to meet the Joint Committee's objection, and therefore the Committee voted to draft and introduce legislation to require the Department to develop and promulgate as rules the appropriate standards.

State Board of Education

The State Board of Education proposed amendments to "Certification" (23 Ill. Adm. Code 25) in November, 1985, which required institutions of higher education to develop written procedures to follow in admitting students to teacher education programs, to implement the provision in the School Code which requires the Board to ensure that all students entering approved teacher education programs are proficient in reading, mathematics and language arts. The Joint Committee objected to the rule in April, 1986, because by requiring institutions to develop procedures for admission, the Board has failed to comply with the School Code. The Board refused to modify or withdraw the rule in response to the Joint Committee's objection because it believes that it has met the requirements of the School Code. After reviewing the Board's response, the Joint Committee voted to draft and introduce legislation requiring the Board to comply with this statutory mandate.

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TABLE 1
GENERAL RULEMAKING BY AGENCY

Abandoned Mined Lands Reclamation Council	2
Administrative Rules, Joint Committee on	5
Aging, Department on	2
Agriculture, Department of	11
Alcoholism and Substance Abuse, Department of	6
Attorney General	2
Banks and Trust Companies, Commissioner of	6
Capital Development Board	4
Carnival-Amusement Safety Board	2
Central Management Services, Department of	14
Children and Family Services, Department of	22
Civil Service System, State Universities	1
Commerce and Community Affairs, Department of	29
Commerce Commission, Illinois	20
Commission Review Board	1
Community College Board, Illinois	2
Comptroller	5
Conservation, Department of	33
Cook County Local Records Commission	1
Corrections, Department of	10
Criminal Justice Information Authority, Illinois	1
Development Finance Authority	4
Education, Board of Higher	3
Education Loan Authority, Illinois Independent Higher	2
Education, State Board of	30
Educational Facilities Authority, Illinois	2
Educational Opportunity, Illinois Consortium For	1
Emergency Services and Disaster Agency	3
Employment Security, Department of	10
Environmental Protection Agency	8
Experimental Organ Transplantation Procedures Board, Illinois	1
Export Development Authority, Illinois	1
Farm Development Authority, Illinois	2
Financial Institutions, Department of	2
Fire Marshal, Office of the State	3
Health Care Cost Containment Council, Illinois	1
Health Facilities Planning Board	9
Housing Development Authority, Illinois	1
Human Rights Commission	1
Human Rights, Department of	1
Illinois, Board of Trustees of the University of	1
Industrial Commission	2
Insurance, Department of	11
Labor, Department of	3
Labor Relations Board, Illinois Local	8
Labor Relations Board, Illinois State	8
Local Governmental Law Enforcement Officers Training Board, Illinois	2
Lottery, Department of (1)	2

TABLE 1
GENERAL RULEMAKING BY AGENCY
(continued)

Mental Health and Developmental Disabilities, Department of	2
Mines and Minerals, Department of	49
Nuclear Safety, Department of	19
Pollution Control Board	43
Prairie State 2000 Authority	2
Public Aid, Department of	82
Public Health, Department of	44
Racing Board, Illinois	14
Registration and Education, Department of	10
Rehabilitation Services, Department of	57
Revenue, Department of (1)	24
Savings and Loan Associations, Commissioner of	1
Scholarship Commission, State	10
Secretary of State	8
State Police, Department of	2
State Police Merit Board, Department of	2
Transportation, Department of	23
Veterans' Affairs, Department of	5
<hr/>	
TOTAL	698

(1) The Illinois Department of the Lottery became an agency separate from the Department of Revenue in 1986.

TABLE 2
OBJECTIONS AND RECOMMENDATIONS ISSUED TO GENERAL RULEMAKING
BY AGENCY

<u>Agency</u>	<u>Number of Objections</u>	<u>Number of Recommendations</u>
Aging, Department on	8	4
Alcoholism and Substance Abuse, Department of	4	2
Carnival - Amusement Safety Board	1	-
Central Management Services, Department of	7	3
Children and Family Services, Department of	1	1
Commerce and Community Affairs, Department of	3	-
Commerce Commission, Illinois	17	2
Commission Review Board	2	2
Comptroller	1	-
Conservation, Department of	3	2
Cook County Local Records Commission	1	-
Corrections, Department of	-	1
Development Finance Authority Illinois	6	4
Education, State Board of Educational Opportunity	26	6
Illinois Consortium for Employment Security,	3	2
Department of	2	1
Environmental Protection Agency	3	2
Export Development Authority Illinois	4	-
Financial Institutions, Department of	3	1
Fire Marshal, Office of the State	2	-
Guardianship & Advocacy Commission	1	1
Insurance, Department of	4	5
Labor, Department of	5	3
Labor Relations Board, Illinois Local	1	1
Labor Relations Board, Illinois State	1	1
Mental Health & Dev. Disabilities, Department of	1	-
Mines and Minerals, Department of	67	5
Nuclear Safety, Department of	21	16
Pollution Control Board	5	-
Prairie State 2000 Authority	1	-
Property Tax Appeal Board	4	3
Public Aid, Department of	16	2

OBJECTIONS AND RECOMMENDATIONS ISSUED TO GENERAL RULEMAKING BY AGENCY
(continued)

<u>Agency</u>	<u>Number of Objections</u>	<u>Number of Recommendations</u>
Public Health, Department of	8	4
Registration and Education		
Department of	3	2
Rehabilitation Services,		
Department of	2	2
Revenue, Department of	5	3
Secretary of State	5	2
Transportation, Department of	2	1
Treasurer	-	1
Veterans' Affairs,		
Department of	-	2
 TOTAL	 <u>249</u>	 <u>87</u>

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TABLE 3
OBJECTIONS AND RECOMMENDATIONS TO GENERAL RULEMAKING
BY TYPE

Type of Objection	Number of Objections	Percentage of Total
Standards and Criteria	117	47.0%
Conflicts with Authorizing Statute	41	16.5%
Statutory Authority	33	13.3%
Policy Not in Rules	9	3.6%
Rules Incomplete	8	3.2%
Violates General Rulemaking Procedures	8	3.2%
Rules Do Not Reflect Agency Policy	5	2.0%
Rules Not Clear/Terminolgy Vague	4	1.6%
Lack of Adequate Justification and Rationale	4	1.6%
Rules Do Not Adequately Implement Statutory Requirements	4	1.6%
Violates Legislative Intent	3	1.2%
Violates Regulatory Flexibility Analysis Requirements	3	1.2%
Violates Incorporation by Reference Procedure	3	1.2%
Rules Conflict with Agency's Rules	2	.8%
Violates State Law and Federal Law or Regulations	2	.8%
Violates Federal Laws	2	.8%
Violates Federal Regulations	1	.4%
TOTAL	<u>249</u>	

Type of Recommendation	Number of Recommendations	Percentage of Total
Agency Seek Legislation	45	51.7%
Rulemaking	32	36.8%
Submit Policy/Timetable to Joint Committee	8	9.2%
Repeal Rules	1	1.1%
Submit Incorporated Materials to Joint Committee for Review	1	1.1%
TOTAL	<u>87</u>	

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TABLE 4
OBJECTIONS ISSUED TO EXISTING RULES
BY AGENCY

<u>Agency</u>	<u>Number of Objections</u>
Commerce Commission, Illinois	1
Elections, State Board of	1
Public Aid, Department of	1
Public Health, Department of	1
Secretary of State	1
TOTAL	<u>5</u>

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TABLE 5
OBJECTIONS TO EXISTING RULES
BY TYPE

<u>Type of Objection</u>	<u>Number of Objections</u>	<u>Percentage of Total</u>
Standards and Criteria	2	40.0%
Violates Federal Regulations	1	20.0%
Violates Incorporation by Reference Procedure	1	20.0%
Violates Objection Response Procedure	1	20.0%
TOTAL	<u>5</u>	

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REVIEW OF EMERGENCY AND PEREMPTORY RULEMAKING

The Illinois Administrative Procedure Act includes two provisions which permit agencies to adopt rules by methods other than the general rulemaking process. These methods, emergency and peremptory rulemaking, allow agencies to adopt rules within a shorter period of time than as provided in the general rulemaking process. The use of emergency and peremptory rulemaking, which provides for the immediate implementation of a rule, is scrutinized by the Joint Committee because these processes circumvent the public notice and comment provisions of the Act. Thirty-eight State agencies adopted 87 emergency rulemakings during 1986, the highest number adopted using this process since 1980. (See Table 13, pages 66-68 for a comparison of emergency rulemaking from 1980 through 1986.) In addition four State agencies adopted 33 peremptory rulemakings in 1986, the highest number ever. (See Table 14, page 69 for a comparison of peremptory rulemaking from 1980 through 1986.) The Joint Committee issued 47 objections and 5 recommendations to emergency rules (Table 7, page 31) and 2 objections to peremptory rules (Table 9, page 35).

Emergency Rulemaking Process

Section 5.02 of the Act authorizes the use of emergency rulemaking if the promulgating agency determines that a situation exists which threatens the public interest, safety or welfare, and which requires the adoption of a rule on fewer days' notice than is required for general rulemaking. Emergency rules can become effective immediately and can remain in effect for a maximum of 150 days. Agencies which want to keep rules adopted on an emergency basis in effect for a longer period of time must propose and adopt the rule using the general rulemaking provisions of the Act. Certain restrictions are placed upon the use of emergency rulemaking due to the lack of safeguards imposed because there is not notice and comment period or prior review by the Joint Committee. First, the emergency rule can only contain those provisions which are in direct response to the emergency situation. Second, an agency cannot adopt an emergency rule that has "substantially the same purpose and effect" more than once in any 24 month period. Third, the agency must inform the affected public of the emergency rule. Through the emergency rulemaking procedures, the Illinois Administrative Procedure Act provides agencies with necessary flexibility to respond to emergency situations, but balances this with the temporary nature of the rule and the restrictions imposed.

Emergency Rulemaking in 1986

Thirty-eight State agencies adopted 87 emergency rulemakings in 1986, and the Joint Committee issued 47 objections and 5 recommendations during that period. The Department of Public Aid adopted more emergency rules than any other State agency, with nine, which accounted for 10% of the total. The Department of Central Management Services adopted 6 emergency rules (7% of the total) and four agencies, the Departments of Commerce and Community Affairs and Insurance, the Illinois Commerce Commission and the State Board of Education each adopted five emergency rules (for a total of 24% of the total). Most emergency rules were justified on the basis of a statutory change, either state or federal, a delay in implementation of which would constitute a threat to the public interest, safety or welfare.

Table 8 (page 32) breaks down the Joint Committee's objections and recommendations to emergency rulemakings by type. The most common objection to emergency rules is a violation of the emergency rulemaking procedures. This occurs when there is no threat to the public interest, safety, or welfare which justifies the emergency. The Joint Committee issued 18 objections (38% of the total) on this basis in 1986. Another common objection, which accounted for 23% of the total, was that the State agency which adopted the emergency rule created the emergency either through action or inaction. The Illinois Supreme Court held, in Senn Park Nursing Center v. Miller, 104 Ill. 2d 169 (1984) that an agency created emergency could not justify the use of emergency rulemaking. The Joint Committee also reviews the statutory authority for emergency rules and issued 6 objections on the basis that the agency did not have the statutory authority for the rule, and 6 objections on the basis that the emergency rule conflicted with the agency's statutory authority. All of the Joint Committee's recommendations were issued in conjunction with statutory authority objections. In five cases, the Joint Committee suggested that the agency seek legislation to grant it the proper authority.

The text of the objections and recommendations issued by the Joint Committee to emergency rules and rulemaking during 1986 is included in another Committee publication entitled "1986 Index of Objections and Recommendations."

Significant Emergency Rulemaking

Summarized in this section are several of the most important emergency rulemakings and Joint Committee objections and recommendations issued during 1986.

The Department of Labor adopted emergency "Health and Safety" rules (56 Ill. Adm. Code 350) in November, 1985, to which the Joint Committee issued five objections in 1986. The rules outlined extensive requirements for health and safety standards in the workplace, and made federal OSHA regulations applicable to public employers in Illinois. The Joint Committee objected to the rules on the bases that: the promulgation of standards and record retention requirements and the authority to hold hearings for violation appeals was the duty of the Illinois Industrial Commission; the promulgation of the rules violated legislative intent; the intergovernmental agreement between the Department and the Commission was not authorized by the Intergovernmental Cooperation Act; the rulemaking was promulgated pursuant to an unauthorized delegation of rulemaking authority; the emergency situation, if one existed, was created by the Department; the rule did not clearly define its scope; and the Department failed to publish a Statement of Statewide Policy Objectives, as required by the State Mandates Act.

The Illinois Development Finance Authority adopted emergency rules entitled "Illinois Development Action Grant Program" (14 Ill. Adm. Code 1200) and "Illinois Housing Partnership Program" (14 Ill. Adm. Code 1210) in December, 1985. In April, 1986, the Joint Committee objected to the rules on the basis that any emergency situation, if one existed, was created by the Authority's failure to adopt rules in a timely fashion, as Public Act 84-109, which these rules were implementing, became effective July 25, 1985, and therefore sufficient time existed for the Authority to implement the programs through the general rulemaking process.

The Illinois Farm Development Authority adopted emergency rules entitled "Rules of the Illinois Farm Development Authority" (8 Ill. Adm. Code 1400) in January, 1986, to establish the State Guarantee Program. The Program provides for the consolidation and restructuring of the existing debts of eligible farmers. The rules established eligibility criteria and application procedures for the Program. The Joint Committee objected to the emergency rule in April, 1986 on the bases that the rule required the administrative fee for the loan be paid by the farmer, and that lenders obtain Authority approval of any lender activities relative to legal action on any delinquent or defaulted loan, contrary to the requirements of the Illinois Farm Development Act. The Joint Committee also recommended that, if the Authority wished to continue to impose these requirements, that it seek legislation to amend the Act to authorize these practices.

The Office of the State Fire Marshal adopted emergency amendments to "Storage, Transportation, Sale and Use of Gasoline and Volatile Oils: Rules and Regulations Relating to Service Stations" (41 Ill. Adm. Code 170) in July,

1986. These rules were necessary, the Fire Marshal contended, to minimize the damage to structures caused by the removal of abandoned underground storage tanks. The amendment allowed certain tanks to remain in place rather than be removed. The Joint Committee objected to these rules in September, 1986, on the bases that the situation at issue did not require the use of emergency rulemaking in lieu of general rulemaking, and the rulemaking was not limited to provisions necessary to alleviate the purported emergency situation.

The Commission Review Board adopted emergency rules entitled "Commission Review Board Procedures" (50 Ill. Adm. Code 7500) in February, 1986 to implement the section of the Workers' Compensation Act which empowers the Board to hear complaints concerning Illinois Industrial Commission's employees' conduct. The Joint Committee objected to the rule on the basis that the Board did not have specific rulemaking authority. During the Joint Committee's review of the Board's related general rulemaking in August, 1986, the Committee suggested that the Board seek legislation granting it rulemaking authority. The Board has indicated that it intends to seek such legislation.

TABLE 6
EMERGENCY RULEMAKING BY AGENCY

Abandoned Mined Lands Reclamation Council	2
Agriculture, Department of	1
Alcoholism and Substance Abuse, Department of	2
Banks and Trust Companies, Commissioner of	2
Carnival-Amusement Safety Board	1
Central Management Services, Department of	6
Children and Family Services, Department of	1
Commerce and Community Affairs, Department of	5
Commerce Commission, Illinois	5
Commission Review Board	1
Conservation, Department of	2
Development Finance Authority	2
Education, State Board of	5
Educational Opportunity, Illinois Consortium For	1
Environmental Protection Agency	2
Export Development Authority, Illinois	1
Farm Development Authority, Illinois	3
Financial Institutions, Department of	1
Fire Marshal, Office of the State	2
Industrial Commission	2
Insurance, Department of	5
Local Governmental Law Enforcement Officers Training Board, Illinois	1
Lottery, Department of	2
Nuclear Safety, Department of	1
Pollution Control Board	2
Prairie State 2000 Authority	2
Public Aid, Department of	9
Public Health, Department of	3
Registration and Education, Department of	1
Rehabilitation Services, Department of	3
Revenue, Department of	2
Savings and Loan Associations, Commissioner of	1
Scholarship Commission, State	2
Secretary of State	2
State Police, Department of	1
Transportation, Department of	1
Travel Regulation Council	1
Veterans' Affairs, Department of	1
	<hr/>
TOTAL	87

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TABLE 7
OBJECTIONS AND RECOMMENDATIONS ISSUED TO EMERGENCY RULEMAKING
BY AGENCY

<u>Agency</u>	<u>Number of Objections</u>	<u>Number of Recommendations</u>
Alcoholism and Substance Abuse, Department of	1	1
Children and Family Services, Department of	1	-
Commerce and Community Affairs, Department of	1	-
Commission Review Board	1	-
Conservation, Department of	1	-
Development Finance Authority Illinois	2	-
Education, State Board of Educational Opportunity Illinois Consortium for	6	1
Farm Development Authority, Ill.	1	-
Financial Institutions, Department of	3	2
Fire Marshal, Office of the State	1	-
Industrial Commission	2	-
Insurance, Department of	3	-
Labor, Department of	3	-
Lottery, Department of	6	-
Public Aid, Department of	2	-
Registration and Education, Department of	3	-
Rehabilitation Services, Department of	1	-
Savings and Loan Commissioner, Office of	3	1
Secretary of State	3	-
Travel Regulation Council	2	-
	1	-
TOTAL	<u>47</u>	<u>5</u>

TABLE 8
OBJECTIONS AND RECOMMENDATIONS TO EMERGENCY RULEMAKING
BY TYPE

Type of Objection	Number of Objections	Percentage of Total
Violates Emergency Rulemaking Procedures	18	38.3%
Agency Created Emergency Statutory Authority	12	25.5%
Conflicts with Authorizing Statute	6	12.8%
Portions of Rulemaking Not Related to Emergency	6	12.8%
Violates Federal Regulations	1	2.1%
Violates Legislative Intent	1	2.1%
Rules Incomplete	1	2.1%
Agency Failed to Publish a Statement of Statewide Policy Objectives	1	2.1%
TOTAL	47	

Type of Recommendation	Number of Recommendations	Percentage of Total
Agency Seek Legislation	5	100%

Peremptory Rulemaking Process

Section 5.03 of the Act authorizes the use of peremptory rulemaking only in very restricted circumstances. Rules adopted by use of peremptory rulemaking may become effective immediately, and remain in effect indefinitely. Certain restrictions are placed upon the use of peremptory rulemaking due to the lack of safeguards imposed because there is no notice and comment period or prior review by the Joint Committee.

First, peremptory rulemaking can be used only if the rulemaking is specifically required by federal law, federal rules and regulations, court order, or in the case of pay rates, collective bargaining agreement. Second, the federal law, federal rules and regulations, court order, or collective bargaining agreement must impose conditions which preclude compliance with the general rulemaking requirements. Third, the agency must not have any discretion regarding the content of the rule. Fourth, a notice of peremptory rulemaking must be filed with the Secretary of State for publication in the Illinois Register within 30 days after the change is required.

Peremptory Rulemaking in 1986

Four State agencies adopted 33 peremptory rulemakings in 1986, and the Joint Committee issued objections to two Pollution Control Board peremptory rules ("Effluent Standards" (35 Ill. Adm. Code 304) and "Water Quality Standards" (35 Ill. Adm. Code 302)). These rules were amended to conform to a 1984 Illinois Supreme Court decision which remanded the case to the Board to consider the risk to the public health imposed by the Board's fecal coliform standard. The Joint Committee objected to the rules on the bases that compliance with the general rulemaking requirements of the Act was not precluded, the agency had discretion over the content of the rules, and the changes were not filed with the Secretary of State within 30 days after the changes were required. Although the Pollution Control Board did not formally respond to the Joint Committee's objections, the Board later agreed to withdraw the peremptory rules. No notice of withdrawal has been published to date.

The text of the objections and recommendations issued by the Joint Committee to peremptory rules and rulemaking during 1986 is included in another Committee publication entitled "1986 Index of Objections and Recommendations."

The Pollution Control Board's use of peremptory rulemaking during 1986 (14 rules) accounted for 42% of the total peremptory rulemakings adopted during the year. In addition, to the "Effluent Standards" and "Water Quality" rules, the Board also amended "Hazardous Air Pollutants" (35 Ill. Adm. Code 231) and "New Source Performance Standards" (35 Ill. Adm. Code 230). The Board justified the use of peremptory rulemakings on the bases that Sections 111 and 112 of the Clean Air Act and Section 9.1(c) of the Environmental Protection Act require the Board's air pollution rules to be consistent with federal Regulations.

All 10 peremptory rulemakings adopted by the Department of Agriculture (30% of the total) amended the "Meat and Poultry Inspection Act" (8 Ill. Adm. Code 125) rules. Peremptory rulemaking was required because the Federal

Poultry Inspection Act and the Illinois Act require the Department's rules to mirror Federal regulations.

The Department of Central Management Services used peremptory rulemaking for the first time in 1986, due to a change in the Illinois Administrative Procedure Act which allows peremptory rulemaking to be used for pay plan changes adopted pursuant to a collective bargaining agreement (Public Act 84-469, effective January 1, 1986). Six peremptory amendments to "Pay Plan" (80 Ill. Adm. Code 310) were adopted by the Department (18% of the total) in 1986.

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TABLE 9

PEREMPTORY RULEMAKING BY AGENCY

Agriculture, Department of	10
Central Management Services, Department of	6
Pollution Control Board	14
Public Aid, Department of	<u>3</u>
	33

TABLE 10
OBJECTIONS AND RECOMMENDATIONS ISSUED TO PEREMPTORY RULES
BY AGENCY

Agency	Number of Objections	Number of Recommendations
Pollution Control Board	2	-

COMPLAINT REVIEW PROGRAM

Sections 7.04 and 7.07 of the Illinois Administrative Procedure Act grant the Joint Committee the authority to review agency rules and policies. Section 7.04 allows the Joint Committee to "undertake studies and investigations concerning rulemaking and agency rules" and requires that the Committee "monitor and investigate" agency compliance with the provisions of the Illinois Administrative Procedure Act, "make periodic investigations of the rulemaking activities of all State agencies, and evaluate and report on all rules in terms of their propriety, legal adequacy, relation to statutory authorization, economic and budgetary effects and public policy."

Section 7.07 of the Act authorizes the Joint Committee to issue objections to existing rules and assigns to the Committee the task of examining "any rule for the purpose of determining whether the rule is within the statutory authority upon which it is based, and whether the rule is in proper form."

Part 260 of the Joint Committee's Operational Rules (1 Ill. Adm. Code 260) outlines the complaint review procedure. Upon receipt of a complaint, an initial review is conducted to determine the need for a full complaint investigation. Most of the inquiries received by the Joint Committee require basic information, such as copies of rules, explanations of the rulemaking process, or referrals to appropriate agencies. These inquiries are easily answered without a full investigation. Others, however, require more extensive research and study prior to formal Joint Committee action.

Five formal reviews were commenced in 1986. The complaints involved the University of Illinois Division of Crippled Children, the Department of Conservation, the Department of Commerce and Community Affairs, and the Department of State Police. In addition, the Joint Committee is monitoring the progress of two state agencies regarding complaints which were registered in 1984 and 1985.

1986 Complaints

University of Illinois Division of Services for Crippled Children

In January, 1986, the Joint Committee formally began its investigation of a complaint initiated against the University of Illinois Division of Services for Crippled Children (DSCC) regarding DSCC's failure under the Illinois Administrative Procedure Act to promulgate rules establishing eligibility criteria. Specifically, the complainant alleged discrimination in program eligibility based on the diagnosis of the child; discrimination in the accessibility and extent of services available to crippled children in Chicago; failure on the part of DSCC to coordinate its services with the Illinois Medicaid program; restrictions upon DSCC benefits available to Medicaid recipients; and lack of retroactive coverage of services provided to crippled children.

The Joint Committee's investigation of the allegations revealed that the DSCC was operating without the benefit of properly promulgated rules, in violation of the Act. As a result, the Board of Trustees of the University of Illinois proposed rules entitled "Program Content and Guidelines for Division of

Services for Crippled Children" (89 Ill. Adm. Code 1100) and adopted rules entitled "Division of Services for Crippled Children: Public Information, Rulemaking and Organization" (2 Ill. Adm. Code 5155). The rules appeared in the February 14, 1986 issue of the Illinois Register. The proposed rules will be considered by the Joint Committee at its January, 1987 meeting.

Department of Conservation

The second complaint filed with the Joint Committee in 1986 involved the implementation of Executive Order #7 (1985) and Public Act 84-1065. Specifically, the complaint alleged that the implementation by the Department of Conservation of Executive Order #7 along with Public Act 84-1065, which amended the "Illinois Endangered Species Protection Act," would pose great difficulties for county highway authorities in completing projects. Specifically, the complainant alleged that the implementation of Executive Order #7 and the subsequent rules required by P.A. 84-1065, which provide for the protection of endangered animals or plants, were unduly restrictive, resulting in extended delays and, in some instances, forfeiture of projects by county highway authorities.

Rules implementing Executive Order #7 and the amendments to the Endangered Species Protection Act had not been proposed at the time that the complaint was filed with the Joint Committee. The Joint Committee met with representatives of the Department of Conservation and were given an approximate date for the proposal of such rules. The complainant was advised to hold any comment concerning such rules and submit them to the Department during the public comment period. In addition, it was suggested that the complainant request a public hearing. The Department proposed rules implementing the Endangered Species Protection Act in the December 12, 1986, issue of the Illinois Register. The rules, entitled "Consultation Procedures for Assessing Impacts of Agency Actions on Endangered and Threatened Species," (17 Ill. Adm. Code 1075) implement the consultation process which is designed to assist State agencies and local governments when assessing the adverse impact of projects on endangered or threatened flora or fauna. This file remains "open" pending Joint Committee review of this rulemaking.

Department of Commerce and Community Affairs

In March, 1986, a request was submitted to the Joint Committee on Administrative Rules to investigate the role of the Department of Commerce and Community Affairs (DCCA) with respect to the Energy Assistance Act. Specifically, the complainant contended that DCCA must initiate rulemaking delineating the criteria to be followed when determining eligibility for the Illinois Residential Affordable Payment Program (IRAPP), which was created to implement the Energy Assistance Act (P.A. 84-1034), which provided for the creation of a 12% payment program for low income utility customers. The authority for IRAPP lies with the Illinois Commerce Commission. The Joint Committee considered the Commission's rules for the implementation of the IRAPP program, entitled "Energy Assistance," (83 Ill. Adm. Code 281) at its April 17, 1986, meeting, at which time 13 objections and 1 recommendation were issued by the Committee to the rules.

Section 4 of the Energy Assistance Act states that to be eligible for the 12% payment program, "a person must be a public utility customer or an applicant for utility services and be eligible for the Home Energy Assistance Program." The Illinois Home Energy Assistance Program (IHEAP) is implemented by the Department of Commerce and Community Affairs (DCCA). The eligibility criteria for IRAPP and IHEAP are the same. The Department of Commerce and Community Affairs processes applications and determines eligibility for IRAPP in conjunction with the IHEAP applications.

It was the contention of the complainant that DCCA must provide rules for processing IRAPP applications separate from the IHEAP application procedures. DCCA's involvement in the program, however, is not legislatively mandated, but is rather the result of a cooperative working agreement between the Commerce Commission and DCCA for the processing of IRAPP applications. DCCA did agree, however, to propose rules which further defined the IHEAP in order to facilitate those parties interested in applying for either or both of the programs. Amendments to the rules entitled "State Administration of the Federal Low-Income Home Energy Assistance Program" (47 Ill. Adm. Code 100) were adopted by DCCA in the December 19, 1986, Illinois Register. The Department has also agreed to propose, in early 1987, amendments to its definitions of "local administering agency" and "household income." This file remains on "open" pending the proposal of additional rules by DCCA and the introduction of legislation in the Spring of 1987 by the Joint Committee in response to the Commission's rules.

Department of State Police

In April, 1986, the Joint Committee received a complaint regarding the Department of State Police. Specifically, the complaint dealt with criminal background investigations. The complainant alleged that the paperwork involved for background checks of school district employees was unduly burdensome. In question was the completion of two forms, the "inter-agency" and "user agreement."

The passage of Senate Bill 1052 (P.A. 84-1089) and the creation of Section 10-21.9 of the School Code require the Department of State Police to provide certain criminal history record information regarding school district employees to employing school districts. The Department explained that the user agreement is a required standard form specified by the U.S. Department of Justice governing the dissemination of Criminal History Record Information, and is used by all agencies requesting such information for non-criminal justice purposes. The inter-agency agreement was prepared by the Department to conform to the requirements of the Intergovernmental Cooperation Act, and it specifically addresses the responsibilities of the Department and local school districts.

It was the conclusion of the Joint Committee that due to the fact that the completion of the "user-agreement" and the "inter-agency" agreement were necessary in order for the State Police to begin processing requests for background investigations, and since the forms must be completed only when the board sends the initial background check request, the procedure was not unduly burdensome to local boards of education. While the Joint Committee did not find the completion of these forms was unduly burdensome, it did however, recommend at the October 9, 1986, meeting that the Department of

State Police promulgate the rules necessary for the proper implementation of the teacher criminal background investigation program. The Department proposed its rules entitled "Criminal History Background Investigations" (20 Ill. Adm. Code 1270) in the November 21, 1986 issue of the Illinois Register. This file remains "open" pending adoption of the rules by the Department.

Department of Conservation

Finally, a complaint was lodged against the Department of Conservation in April, 1986, questioning the authority of the Department to sell tree and shrub seedlings. The complainant alleged that tax-supported nurseries should not be allowed to expand, but rather, the State should allow private nurseries to supply products for government programs as well as for private demands. This complaint is on-going with negotiations currently taking place between the complainant and the Department. In addition, the Department proposed amendments to its rules entitled "Sale of Tree and Shrub Seedlings" (17 Ill. Adm. Code 1540) in the August 29, 1986, issue of the Illinois Register. The Committee considered the rule at its November 19, 1986, meeting and voted one objection and one recommendation to the rule. In relation to this complaint, the Joint Committee suggested in its recommendation that the Department of Conservation seek legislation which would authorize it to enter into long-term contractual growing agreements with commercial nurserymen to purchase tree and shrub seedlings to be used by the Department for its program under its rule "Sale of Tree and Shrub Seedlings." This file remains "open" pending the response of the Department to the Committee's recommendation.

1984 and 1985 Complaints

Department of Transportation

The Joint Committee is monitoring the progress of the Department of Transportation, Division of Water Resources in its promulgation of "Rules for Construction in Rivers, Lakes, and Streams." In 1984, after a complaint review revealed that the rules had not been formally promulgated pursuant to the Illinois Administrative Procedure Act, but had been enforced by the Department for a number of years, the Joint Committee recommended that the Department adopt these rules. The Department proposed rules in December of 1984. However, based upon the extent and nature of the comments received by the Department during the public comment period, the Department ceased promulgation of the rules, indicating that new rules would be proposed.

The Department was contacted in March of 1986 due to the fact that it had not repropounded the rules. The Department's response stated that an opinion of the Attorney General regarding the Department's authority to regulate construction in waters in Illinois had been requested. The Department further stated that it did not intend to issue a rulemaking notice until such time as the Attorney General issues his opinion. Therefore, this file remains open pending issuance of such opinion.

Department of Employment Security

In 1985, the Joint Committee was asked to investigate the Department of Employment Security's policies regarding appeal hearings. The complainant contended that the Department was requiring that most hearings be conducted by telephone even in instances where the referee would have preferred an in-person hearing. The complainant also contended that the Department's rules regarding telephone hearings raise several constitutional issues including the right to due process.

The Committee considered the issue at the February, 1986, meeting, at which time it was decided to postpone consideration pending review of the Department's amendments to its rules entitled "Claims, Adjudication, Appeals and Hearings" (56 Ill. Adm. Code 2720). The Department proposed the amendments in the August 22, 1986 issue of the Illinois Register. This file remains open pending consideration of the rule by the Joint Committee.

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PUBLIC ACT REVIEW

Section 7.05(3) of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1985, ch. 127, par. 1007.05) provides that the Joint Committee will maintain a review program to study the impact of legislative changes on agency rules and rulemaking. The Joint Committee fulfills this statutory obligation through its public act review program. Under this program, the Joint Committee reviews each public act filed during the year and determines whether the legislation requires agency rulemaking. Upon making this determination, the Joint Committee notifies each agency that will be required to promulgate rulemaking and requests information regarding the status of such rulemaking. The Joint Committee then monitors the agency's progress in fulfilling the rulemaking requirement. A primary goal of the Joint Committee in this program is to ensure that the rulemaking is implemented in an expeditious manner as required by Section 8 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1985, ch. 127, par. 1008).

The Joint Committee reviewed 427 public acts which were passed during 1986 by the 84th General Assembly (Table 11, pages 44 - 48). From these, letters stating that rulemaking may be required by 216 of the Acts were sent by the Joint Committee to 62 State agencies. The following table summarizes the Joint Committee's findings. The table lists each public act which may require new or amendatory rulemaking, the agency or agencies involved, and the agency's response to the Joint Committee's request regarding the status of such rulemaking.

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TABLE 11
PUBLIC ACTS WHICH MAY REQUIRE RULEMAKING

Public Act	Agency	Response
84-1098	Aband. Mined Lands Rec. Coun.	Agree
84-1358	Aging	Disagree
84-1046	Agriculture	Disagree
84-1052	Agriculture	Disagree
84-1085	Agriculture	Disagree
84-1086	Agriculture	Failure to Respond
84-1273	Agriculture	Disagree
84-1274	Agriculture	Disagree
84-1276	Agriculture	Disagree
84-1268	Alcoholism & Substance Abuse	Failure to Respond
84-1358	Alcoholism & Substance Abuse	Failure to Respond
84-1362	Alcoholism & Substance Abuse	Failure to Respond
84-1105	Attorney General	Failure to Respond
84-1273	Beef Council	Failure to Respond
84-1240	Board of Governors	Disagree
84-1240	Board of Regents	Disagree
84-1096	Capital Development Board	Agree
84-1066	Central Management Services	Disagree
84-1067	Central Management Services	Agree
84-1087	Central Management Services	Agree
84-1095	Central Management Services	Disagree
84-1126	Central Management Services	Agree
84-1078	Children & Family Services	Agree
84-1277	Children & Family Services	Agree
84-1278	Children & Family Services	Agree
84-1279	Children & Family Services	Disagree
84-1286	Children & Family Services	Agree
84-1371	Children & Family Services	Agree
84-1019	Commerce & Comm. Affairs	Agree
84-1088	Commerce & Comm. Affairs	Disagree
84-1090	Commerce & Comm. Affairs	Disagree
84-1120	Commerce & Comm. Affairs	Agree
84-1124	Commerce & Comm. Affairs	Agree
84-1393	Commerce & Comm. Affairs	Agree
84-1399	Commerce & Comm. Affairs	Agree
84-1025	Commerce Commission	Failure to Respond
84-1034	Commerce Commission	Failure to Respond
84-1063	Commerce Commission	Failure to Respond
84-1093	Commerce Commission	Failure to Respond
84-1123	Commissioner of Banks & Trusts	Agree
84-1127	Commissioner of Banks & Trusts	Disagree
84-1363	Commissioner of Banks & Trusts	Disagree
84-1337	Community College Board	Disagree
84-1424	Community College Board	Disagree
84-1122	Comptroller	Failure to Respond
84-1237	Comptroller	Failure to Respond
84-1344	Comptroller	Failure to Respond
84-1065	Conservation	Agree
84-1259	Conservation	Agree
84-1260	Conservation	Agree

TABLE 11
PUBLIC ACTS WHICH MAY REQUIRE RULEMAKING
(continued)

Public Act	Agency	Response
84-1313	Corrections	Disagree
84-1411	Corrections	Agree
84-1023	Development Finance Auth.	Failure to Respond
84-1090	Employment Security	Failure to Respond
84-1336	Employment Security	Failure to Respond
84-1312	Energy & Natural Resources	Disagree
84-1347	Energy & Natural Resources	Disagree
84-1360	Energy & Natural Resources	Disagree
84-1071	Environmental Protection Agency	Failure to Respond
84-1072	Environmental Protection Agency	Failure to Respond
84-1319	Environmental Protection Agency	Failure to Respond
84-1422	Environmental Protection Agency	Failure to Respond
84-1027	Farm Development Authority	Failure to Respond
84-1058	Farm Development Authority	Failure to Respond
84-1106	Farm Development Authority	Failure to Respond
84-1036	Financial Institutions	Failure to Respond
84-1421	Fire Marshal	Failure to Respond
84-1358	Guardianship & Advocacy	Agree
84-1240	Health Care Containment Council	Agree
84-1084	Human Rights	Disagree
84-1084	Human Rights Commission	Disagree
84-1097	Industrial Commission	Failure to Respond
84-1010	Insurance	Failure to Respond
84-1032	Insurance	Disagree
84-1035	Insurance	Failure to Respond
84-1431	Insurance	Failure to Respond
84-1329	Joint Committee on Adm. Rules	Agree
84-1056	Labor	Disagree
84-1251	Labor	Agree
84-1282	Liquor Control Commission	Failure to Respond
84-1364	Liquor Control Commission	Failure to Respond
84-1104	Local Labor Relations Board	Agree
84-1128	Lottery	Failure to Respond
84-1252	Mental Health & Dev. Disabilities	Agree
84-1268	Mental Health & Dev. Disabilities	Disagree
84-1296	Mental Health & Dev. Disabilities	Disagree
84-1367	Mental Health & Dev. Disabilities	Disagree
84-1373	Mental Health & Dev. Disabilities	Agree
84-1376	Mental Health & Dev. Disabilities	Agree
84-1397	Mental Health & Dev. Disabilities	Agree
84-1392	Military & Naval	Disagree
84-1070	Mines and Minerals	Disagree
84-1293	Mines and Minerals	Disagree
84-1343	Mines and Minerals	Disagree
84-1406	Nuclear Safety	Agree
84-1221	Pollution Control Board	Failure to Respond
84-1319	Pollution Control Board	Failure to Respond
84-1301	Prisoner Review Board	Failure to Respond
84-1034	Public Aid	Failure to Respond
84-1252	Public Aid	Agree
84-1253	Public Aid	Agree
84-1268	Public Aid	Agree

TABLE 11
PUBLIC ACTS WHICH MAY REQUIRE RULEMAKING
(continued)

Public Act	Agency	Response
84-1271	Public Aid	Disagree
84-1321	Public Aid	Agree
84-1349	Public Aid	Disagree
84-1358	Public Aid	Agree
84-1359	Public Aid	Disagree
84-1385	Public Aid	Agree
84-1388	Public Aid	Agree
84-1389	Public Aid	Agree
84-1402	Public Aid	Agree
84-1040	Public Broadcasting Council	Failure to Respond
84-1015	Public Health	Failure to Respond
84-1048	Public Health	Failure to Respond
84-1064	Public Health	Failure to Respond
84-1069	Public Health	Failure to Respond
84-1085	Public Health	Failure to Respond
84-1091	Public Health	Failure to Respond
84-1096	Public Health	Failure to Respond
84-1245	Public Health	Failure to Respond
84-1252	Public Health	Failure to Respond
84-1254	Public Health	Agree
84-1294	Public Health	Failure to Respond
84-1322	Public Health	Failure to Respond
84-1341	Public Health	Failure to Respond
84-1350	Public Health	Failure to Respond
84-1358	Public Health	Failure to Respond
84-1387	Public Health	Failure to Respond
84-1404	Public Health	Failure to Respond
84-1409	Public Health	Failure to Respond
84-1086	Racing Board	Failure to Respond
84-1080	Registration & Education	Failure to Respond
84-1082	Registration & Education	Failure to Respond
84-1117	Registration & Education	Failure to Respond
84-1235	Registration & Education	Failure to Respond
84-1242	Registration & Education	Failure to Respond
84-1252	Registration & Education	Failure to Respond
84-1299	Registration & Education	Failure to Respond
84-1345	Registration & Education	Failure to Respond
84-1358	Registration & Education	Failure to Respond
84-1361	Registration & Education	Failure to Respond
84-1268	Rehabilitation Services	Disagree
84-1355	Residential Services Authority	Disagree
84-1009	Revenue	Disagree
84-1012	Revenue	Agree
84-1027	Revenue	Agree
84-1042	Revenue	Agree
84-1076	Revenue	Failure to Respond
84-1099	Revenue	Agree
84-1271	Revenue	Agree
84-1292	Revenue	Agree
84-1303	Revenue	Agree
84-1307	Revenue	Agree
84-1315	Revenue	Agree

TABLE 11
PUBLIC ACTS WHICH MAY REQUIRE RULEMAKING
(continued)

Public Act	Agency	Response
84-1382	Revenue	Agree
84-1400	Revenue	Agree
84-1405	Revenue	Agree
84-1408	Revenue	Agree
84-1417	Revenue	Agree
84-1418	Revenue	Disagree
84-1429	Revenue	Agree
84-1290	Scholarship Commission	Agree
84-1300	Scholarship Commission	Agree
84-1103	Secretary of State	Failure to Respond
84-1302	Secretary of State	Disagree
84-1304	Secretary of State	Disagree
84-1307	Secretary of State	Disagree
84-1311	Secretary of State	Disagree
84-1368	Secretary of State	Disagree
84-1394	Secretary of State	Disagree
84-1412	Secretary of State	Agree
84-1420	Secretary of State	Disagree
84-1423	Secretary of State	Agree
84-1028	St. Employees Retirement System	Agree
84-1095	St. Employees Retirement System	Disagree
84-1413	State Board of Education	Disagree
84-1020	State Board of Education	Disagree
84-1021	State Board of Education	Disagree
84-1022	State Board of Education	Disagree
84-1054	State Board of Education	Agree
84-1068	State Board of Education	Agree
84-1089	State Board of Education	Disagree
84-1096	State Board of Education	Disagree
84-1220	State Board of Education	Agree
84-1234	State Board of Education	Disagree
84-1239	State Board of Education	Agree
84-1243	State Board of Education	Agree
84-1244	State Board of Education	Disagree
84-1250	State Board of Education	Disagree
84-1283	State Board of Education	Agree
84-1287	State Board of Education	Agree
84-1294	State Board of Education	Agree
84-1318	State Board of Education	Disagree
84-1334	State Board of Education	Agree
84-1338	State Board of Education	Disagree
84-1346	State Board of Education	Disagree
84-1383	State Board of Education	Agree
84-1401	State Board of Education	Agree
84-1416	State Board of Education	Disagree
84-1420	State Board of Education	Agree
84-1424	State Board of Education	Disagree
84-1014	State Board of Elections	Failure to Respond
84-1026	State Board of Elections	Failure to Respond
84-1261	State Board of Elections	Failure to Respond
84-1104	State Labor Relations Board	Agree
84-1053	State Police	Agree

TABLE 11
PUBLIC ACTS WHICH MAY REQUIRE RULEMAKING
(continued)

Public Act	Agency	Response
84-1279	State Police	Agree
84-1318	State Police	Disagree
84-1366	State Police	Agree
84-1377	State Police	Disagree
84-1430	State Police	Agree
84-1358	State Police Merit Board	Agree
84-1351	Summer Schools Arts Council	Failure to Respond
84-1231	Supreme Court	Failure to Respond
84-1395	Supreme Court	Disagree
84-1007	Transportation	Disagree
84-1008	Transportation	Agree
84-1049	Transportation	Agree
84-1060	Transportation	Agree
84-1061	Transportation	Agree
84-1076	Transportation	Disagree
84-1246	Transportation	Disagree
84-1330	Transportation	Disagree
84-1365	Treasurer	Disagree
84-1268	Veterans' Affairs	Disagree

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1986 LEGISLATIVE ACTIVITY

The passage of legislation which clarifies as well as upholds the intent of the General Assembly is a priority of the Joint Committee. The Joint Committee successfully introduced five public acts during 1986, containing a total of 23 separate issues addressed by the Committee throughout the past 12 months.

The issues contained in the following public acts were brought to the attention of the full committee after special subcommittee chaired by Representative Ellis Levin, with Representatives Monroe Flinn and Myron Olson, reviewed all of the recommendations for legislation in order to establish the priority of the issues to be handled. The Joint Committee also sponsors legislation to amend the Illinois Administrative Procedure Act to improve the oversight process for the State agencies in Illinois.

The following is a review of the Joint Committee's 1986 legislative package. Also included is a summary of Senate Bill 2255, which was not sponsored by the Joint Committee, but does however amend the Illinois Administrative Procedure Act and therefore warrants mention in this article.

Public Act 84-1258. Public Act 84-1258 (Senate Bill 1854, sponsored by Senators Lechowicz and Karpel and Representative Flinn), effective September 18, 1986, amends the Firearm Owner's Identification Card Act and the Fish and Wildlife Codes. Specifically, P.A. 84-1258: (1) exempts hunters from having to physically possess a Firearm Owner Identification Card if they are hunting on Department of Conservation owned or managed sites and are required to deposit their identification card with the Department's representative; (2) permits the Department of Conservation to regulate the possession, transportation and shipment of aquatic life not indigenous to the state; and (3) permits the Director of the Department of Conservation to exempt non-resident participants and official gunners at field trials from the Illinois hunting license requirements.

Public Act 84-1329. Public Act 84-1329 (House Bill 3156, sponsored by Representatives Levin and Olson and Senators Lechowicz and Karpel), effective September 9, 1986, was initiated by the Joint Committee. The Act amends Sections 5.01 and 7.06 of the Illinois Administrative Procedure Act to provide for the extension of the 45 day second notice period. The extension will be based upon the mutual agreement of the Joint Committee and the agency proposing the rule and shall last no longer than an additional 45 days.

Public Act 84-1335. Public Act 84-1335 (Senate Bill 1858, sponsored by Senators Lechowicz and Karpel and Representatives Flinn, McMaster, Levin and Olson), effective September 9, 1986, amends the Illinois Public Labor Relations Act and the Chicago School System Article of the School Code. Respectively, P.A. 84-1335: (1) provides that if a fact-finder does not make written findings of fact and recommendations for the resolution of a labor dispute and serve and publicize the findings within 45 days of the date of appointment of the fact-finder, the parties may resume negotiations; and (2) provides that a violation of the professional standards set forth in the Code

of Professional Responsibility for Arbitrators of Labor Management Disputes of the National Academy of Arbitrators, the American Arbitrator Association, and the Federal Mediation and Conciliation Service shall be grounds for removal of the hearing officer from the master list of hearing officers maintained by the State Board of Education.

Public Act 84-1358. Public Act 84-1358 (Senate Bill 1856, sponsored by Senators Lechowicz and Karpiel and Representatives Levin, Curran, Olson and Ronan), effective September 10, 1986, was drafted in order to resolve statutory authority issues which were discovered during the Committee's review of the rules of several State agencies. Specifically, P.A. 84-1358:

- (1) Amends Section 2-10 of the Public Aid Code to bring the residency requirements contained in this Section into compliance with federal residency requirements for all public aid programs which do not have more specific residency requirements; amends Section 4-1.10 of the Public Aid Code to require the Department of Public Aid to include within its rules standards used to determine when registrants shall be sanctioned under the Work Demonstration Program; amends Section 5-5.8a of the Public Aid Code to require skilled nursing facilities receiving payment for exceptional care needs to meet licensure and certification requirements as well as any other special conditions for providing such care as may be established by the Department of Public Health.
- (2) Amends Sections 2.01 and 7.01 of the Child Care Act of 1969 to authorize the Department of Children and Family Services' current practice of admitting persons 18 years of age and older to child care institutions and maternity centers under certain circumstances and to delete the requirement that a child care facility have on file records designating the manner in which children are to be released to persons on the primary release list.
- (3) Adds Section 17a-11 to "An Act creating the Department of Children and Family Services, codifying its powers and duties, and repealing certain Acts and Sections herein named" to provide specific authorization for the Governor's Youth Services Initiative.
- (4) Amends Sections 5 and 11 of the Guardianship and Advocacy Act to require the Guardianship and Advocacy Commission to set forth in its rules the procedures by which the fee eligible persons must pay for legal services is determined, and the procedures by which it will attempt to secure private counsel for eligible persons. The amendments also require the Legal Advocacy Service to make a good faith effort to obtain private counsel for eligible persons, and adds a new provision stating that the Commission's rules are subject to the requirements of the Illinois Administrative Procedure Act.
- (5) Amends the Pharmacy Practice Act to clarify that the Department of Registration and Education shall establish guidelines for the designation of a registered pharmacist-in-charge for each division, and to allow pharmacists to use "Facts and Comparisons," "The Modern Drug Encyclopedia," or any other current compendium

approved by the Department in lieu of the United States Pharmacopia.

- (6) Amends Section 7 of the Hospice Program Licensing Act to grant the Department of Public Health the authority to renew a hospice license to a hospice program which is not in compliance with the Hospice Program Licensing Act and the Department's rules governing hospice programs based upon submission of an acceptable plan of correction by the hospice.
- (7) Amends Section 20-14.4 of the School Code to allow the Illinois State Scholarship Commission to require that recipients of grants under the Correctional Officer's Survivor Grant Program maintain satisfactory academic progress.
- (8) Implements Public Act 83-193 which was the result of a recommendation by the House Human Services Committee to revise and rewrite the Public Aid Code to require the Department of Public Aid to develop a single application for public aid benefits, including income, medical, food stamps, emergency assistance and social services.
- (9) Authorizes a regional authority, under the Human Rights Commission, to conduct investigations concerning alleged human rights violations occurring outside the region in which the authority sits. This proposed statutory provision will allow a complaint to be made to a different region whenever the regional authority where the alleged rights violation occurred has a conflict of interest which arises out of a pending lawsuit against the authority, or other such circumstances.
- (10) Amends Section 2 of "An Act in relation to rehabilitation of disabled persons" to require the Department of Rehabilitation Services to promulgate rules setting forth the standards for the award of homemaker service contracts.
- (11) Amends Section 6 of the Alcoholism and Substance Abuse Act to require the Department of Alcoholism and Substance Abuse to promulgate rules which delineate the standards used by the Department in determining whether to grant extensions of time to providers in submitting revenue/expense reporting information required by the Department.
- (12) Amends "An Act in relation to the State Police" to require the Department of State Police Merit Board to include within its rules the standards it uses to determine whether compensation will be awarded to a police officer who is found not guilty or has served a greater period of suspension than prescribed by the Board.
- (13) Amends the Illinois Public Community College Act to require the Illinois Community College Board to promulgate as rules the information it requires of community college districts when they apply for approval of new colleges and branches, to extend courses into non-district territory, and for approval of new programs.

Public Act 84-1390. Public Act 84-1390 (Senate Bill 1855, sponsored by Senators Lechowicz and Karpiel and Representatives Flinn, Olson, Levin and McMaster), effective September 18, 1986, clarifies various statutory authority issues which the Committee encountered in its review of rules. Specifically P.A. 84-1390:

- (1) Amends the Credit Union Act to require the Board of Directors of any credit union subject to the Act to provide general insurance coverage for the unlawful acts of third persons and officials and employees and to authorize that the Director of Department of Financial Institutions may require special examinations of and special financial reports from a credit union of a credit union organization, as well as requiring that prior approval is received from the Department before becoming involved with a credit union organization.
- (2) Amends the Unemployment Insurance Act to specify that an employer must notify each employee of the employee's "duty," rather than his "right," to report to the employer gratuities received by the employee which are required to be treated as wages.
- (3) Amends the Illinois Vehicle Code to permit a fifty percent reduction in registration fees for vehicles of spouses, widows and widowers of persons eligible to claim a grant under the Senior Citizens and Disabled Persons Property Tax Relief and Pharmaceutical Assistance Act and to provide that no more than one reduced registration fee shall be allowed during any twelve month period based on the primary eligibility of any individual, whether such reduced registration fee is allowed to the individual or to the spouse, widow or widower.

In addition, the Vehicle Code is being amended to provide the Secretary of State with the authority to regulate the procedures used by a lienholder when repossessing a vehicle.

- (4) Amends the Illinois Income Tax Act to specify that the amounts of capital gain income for which a trust or estate is entitled to a charitable deduction for federal income tax purposes shall not be added to taxable income for Illinois income tax purposes.

Public Act 84-1452. Public Act 84-1452 (Senate Bill 2255), effective January 5, 1987 creates the Rural Economic Development Act and amends the Illinois Administrative Procedure Act by making the small business flexibility provisions of the Act applicable to small municipalities. It defines small municipality to include a municipality of 5000 or fewer inhabitants and municipalities of more than 5000 inhabitants which employ fewer than 50 full-time persons.

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PUBLICATIONS AND NEW RULES OF THE JOINT COMMITTEE

In an attempt to aid state agencies in promulgating rules, and members of the general public in understanding rules and the rulemaking process, the Joint Committee revised two publications, developed an index to the Committee's objections and recommendations, and amended its Operational Rules during 1986.

Illinois Regulation, the Joint Committee's weekly publication summarizing the regulatory changes of State agencies, is currently distributed to all members of the General Assembly, State agency rules coordinators, lobbyists, and approximately 400 businesses, chambers of commerce, libraries, government agencies, law firms, and other interested individuals and entities. The publication summarizes rules in a subject area format. Illinois Regulation is the result of the Regulatory Flexibility Law which became effective in 1982 and which required agencies to provide some flexibility in rules imposing a burden upon small businesses. In order to implement this law, small businesses are encouraged to raise issues and to suggest alternatives to rulemakings proposed by State agencies. The publication has been expanded to provide information regarding agency rulemakings to a broader spectrum of entities and individuals, and is directed towards the individuals being regulated, rather than the regulating entities.

In addition to Illinois Regulation, the Joint Committee has published a revised Guide to the Illinois Administrative Procedure Act (1986). The Guide provides a clear section-by-section explanation of the Act to participants and potential participants in the rulemaking process. The Joint Committee is confident that the Guide will increase participants' awareness of the process, and therefore increase their ability to influence the substance of rules, and consequently increase the level of public participation in the rulemaking process.

In addition to the revision of existing publications, the Joint Committee has developed a new research tool. During 1986, the Joint Committee compiled the text of every objection and recommendation it has issued since the Committee's inception in 1978 into a set of volumes. A comprehensive set of indices to the volumes were developed so that objections and recommendations can be located by agency or by Administrative Code citation. The actions were also classified by type so that all objections or recommendations issued on a particular basis (e.g. lack of statutory authority) can be located. The index system has contributed significantly to the ability of the Joint Committee to give precedential value to past objections and recommendations. The index and text of objections and recommendations should be available for public distribution during 1987.

Finally, the Joint Committee's Operational Rules (1 Ill. Adm. Code 210, 220, 230, 240, and 260) were substantially revised and updated to comply with current law and practices. These rules were carefully considered by the Operational Rules Subcommittee of the Joint Committee. The Subcommittee, which held four public hearings to consider the rules, was chaired by Representative Ellis Levin, with Representatives Monroe Flinn and Myron Olson serving as members. The revised rules appeared in the December 26,

1986 issue of the Illinois Register and will become effective on May 1, 1987. The rules place a much greater emphasis upon the economic and budgetary effects of rules upon the regulated public and State government. It is expected that these rules will require all State agencies to spend more time in the preliminary stages of rule development in order to consider the ramifications of rules, rather than at later stages when there is less flexibility in the process.

The publications and other materials prepared by the Joint Committee during 1986 demonstrate the Committee's commitment to ensuring that the affected public is aware of State regulatory activities, and that State agencies fully consider the ramifications of such activities prior to implementation.

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COURT DECISIONS AND ATTORNEY
GENERAL OPINIONS

Section 7.05 of the Illinois Administrative Procedure Act requires that the Joint Committee study the impact of court rulings and administrative actions on agency rules and rulemaking. In order to carry out this responsibility, the Joint Committee reviews court decisions and Attorney General opinions, and monitors pending litigation which may affect administrative rulemaking. Several noteworthy decisions and opinions involving interpretations of the Illinois Administrative Procedure Act were issued during 1986. The following is a brief summary of those decisions and opinions.

In Ogden - Fairmount, Inc. v. Illinois Racing Board, 147 Ill. App. 3d 789, 101 Ill. Dec. 558, 498 N.E.2d 882 (5th Dist., 1986), the Fifth District Appellate Court held that a Racing Board resolution that three competitive bids should accompany an application for disbursement of funds from the Race Track Improvement Fund was not binding upon race track licensees as a rule because it was not promulgated in compliance with the Illinois Administrative Procedure Act. The court indicated that the resolution was an "arbitrary exercise of administrative powers" and that all consequences resulting from the failure to follow the resolution must also fail. Therefore, the court affirmed the trial court's order vacating the Racing Board's orders directing the organization licensee to reimburse the Race Track Improvement Fund \$2,101,570 and assessing civil penalties in the amount of \$105,000.

In Shanahan v. Edgar (1st Dist., No. 85-1377). The First District Appellate Court held that a rule adopted by the Secretary of State denying driver's licenses for five years to people convicted of multiple drunken driving offenses is in excess of the Secretary's authority. The Fourth District Appellate Court held the same regulation invalid in 1985 in Franz v. Edgar, 133 Ill. App. 3d 513, 88 Ill. Dec. 557, 478 N.E.2d 1165. The court stated that "The Legislature has not . . . adopted a provision establishing a five-year ban on the reinstatement of driving privileges to anyone with at least two DUI's. The secretary's obligation to protect the public safety does not encompass the discretionary power to impose an additional period of deprivation of a person's driving privileges beyond the statutory period of one year on no ground other than the circumstance that the applicant was, in the past, an active alcoholic."

In Anderson v. Edgar, 147, Ill. App. 3d 161, 100 Ill. Dec. 935, 497 N.E.2d 1297 (4th Dist., 1986), the Fourth District Appellate Court held that a motorist whose driver's license was revoked for driving under the influence of alcohol failed to fully comply with the Secretary of State's regulations to establish that he was free from alcohol problems and therefore not entitled to reinstatement of driving privileges. The court indicated that "After an individual's license has been revoked, the Secretary has considerable discretion in issuing that person another license. [citation omitted] The Secretary has promulgated regulations to assist him in this task. These regulations have the force and effect of law."

In Park v. Coler, 143 Ill. App. 3d 727, 97 Ill. Dec. 648, 493 N.E.2d 130 (4th Dist., 1986) the Fourth District Appellate Court stated that a policy memorandum of the Illinois Department of Public Aid requiring that eligible

parents and siblings in the home not included in the assistance unit be added to the unit and requiring the caretaker relative to sign a designated form "failed to meet the requirements for peremptory rulemaking as required by Section 5.03 of the Illinois Administrative Procedure Act . . . because notice of the same was not filed with the Secretary of State or published in the Illinois Register." However, the court relied upon a previously filed and published adopted rule (89 Ill. Adm. Code 112.9) in determining that the Department could require a caretaker relative to sign documents listing all children and their income in order to receive Aid to Families with Dependent Children benefits. The court further stated that the fact that this information was to be furnished on a certain form "was a detail for which no rule was required."

In Navarro v. Edgar, 145 Ill. App. 3d 413, 495 N.E.2d 1085, 99 Ill. Dec. 350 (1st Dist., 1986), the First District Appellate Court reversed a circuit court opinion granting attorney fees and costs pursuant to Section 2-611 of the Code of Civil Procedure to a plaintiff whose driving privileges were suspended as a result of involvement in a traffic accident. The plaintiff claimed attorney fees and costs because of an allegedly untrue allegation made at the administrative level (in the form order of suspension). In the alternative, the plaintiff alleged that Section 14.1(b) of the Illinois Administrative Procedure Act entitled him to fees and costs. The appellate court discussed Section 14.1(b) of the Act, which provides that when an administrative rule is invalidated by a court for any reason, the party bringing the action is entitled to the reasonable expenses of the litigation. The court distinguished this case from Ackerman v. Department of Public Aid, 128 Ill. App. 3d 982, 84 Ill. Dec. 165, 471 N.E.2d 931 because in Ackerman, the plaintiff successfully challenged an established practice of the Department which, although not promulgated as a rule, was recognized and condoned in a Department policy manual, and which therefore "had the effect, force and impact of a rule." Since in this case, the court stated, there was no evidence that the Secretary's practice was an established one, or one which had any degree of general applicability, fees could not be authorized.

In Sutton v. Edgar, 147 Ill. App. 3d 723, 101 Ill. Dec. 113, 498 N.E.2d 295 (4th Dist., 1986), the Fourth District Appellate Court held that the Secretary of State's decision that a motorist convicted of drunk driving whose driving privileges were revoked was not entitled to reinstatement of full driving privileges was not against the manifest weight of the evidence, but ordered the Secretary to issue the plaintiff a restricted driving permit. The court further held that the plaintiff was not entitled to attorneys fees under Section 14.1(b) of the Illinois Administrative Procedure Act because the administrative rule challenged by the plaintiff was declared invalid in an earlier case (Franz v. Edgar, 133 Ill. App. 3d 513, 88 Ill. Dec. 557, 478 N.E.2d 1165 (1985)).

In Ecko, Inc. v. Edgar, 90 Ill. Dec. 423, 135 Ill. App. 3d 557, 482 N.E.2d 130 (4th Dist., 1985), the Fourth District Appellate Court considered the Secretary of State's practice of auditing first year mileage for vehicle license fees under the International Registration Plan. The Secretary operated this program under guidelines adopted by the State - members of the Plan, and the court held that the Secretary's interpretation of the guidelines was incorrect. The plaintiff sought to recover attorney's fees for the second hearing because the Secretary failed to follow its own rule requiring a court reporter at all hearings (the tape recorder malfunctioned at the first hearing

and an accurate transcript could not be made). The court stated that fee-recovery statutes must be strictly construed, and that Section 14.1(b) of the Illinois Administrative Procedure Act does not permit recovery simply because an agency does not follow its own rules.

In Board of Education of St. Charles Community Unit School District, No. 303, 137 Ill. App. 3d 965, 485 N.E.2d 584, 92 Ill. Dec. 773 (2nd Dist., 1985), the Second District Appellate Court reversed the circuit court and affirmed the decision of the State Board of Education that a hearing officer's decision was deemed served upon the local board of education on the day it was mailed to the board's attorney. In making this determination, the court relied upon Section 14 of the Illinois Administrative Procedure Act, which provides that "[p]arties or their agents appointed to receive service of process shall be notified either personally or by registered or certified mail of any decision or order" and the State Board's rules which defined "service" as "personal service or by certified or registered mail, postage prepaid, to the individual's last known address" (23 Ill. Adm. Code 51.10). As a result of defining "service" as the mailing date, the local board's filing of a complaint for administrative review 36 days later was not within the 35-day jurisdictional limit, and therefore it was barred from judicial review.

In Thurston v. Illinois Department of Employment Security, 147 Ill. App. 3d 734, 101 Ill. Dec. 540, 498 N.E.2d 864 (4th Dist., 1986), the Fourth District Appellate Court reversed a circuit court ruling declaring a Department of Employment Security rule invalid and ordering the Department to provide a transcript of administrative hearing proceedings gratis. The Unemployment Insurance Act requires that the Board of Review must provide transcripts of proceedings before the Referee within 35 days of the date of the filing of an appeal by any party. The appellate court interpreted the statute to require the Department to pay for the preparation of the original transcript, as it did in the case, and the rule to require the Department to provide a transcript for inspection and, it requested, for copying for a charge. As the Department fulfilled its statutory duty, the appellate court held that the rule was not invalid.

In U.S. Ecology, Inc. v. Carlson, 638 F. Supp. 513 (C.D. Ill., 1986), the plaintiffs challenged the proposed inclusion of a chemical waste disposal site on the national priorities list of hazardous waste sites (NPL). The plaintiff alleged that the Environmental Protection Agency and its officials denied it due process and violated the Illinois Administrative Procedure Act by failing to provide it notice and a hearing prior to submitting its site to the United States Environmental Protection Agency for placement on the NPL. The court held that, as the state did not waive its Eleventh Amendment immunity from suit in federal court, the court lacked subject matter jurisdiction. The court also noted that the alleged deprivation of a liberty or property interest was insufficient to show cause.

On February 13, 1986, the Attorney General of the State of Illinois issued an opinion interpreting Section 26(h)(11) of the Illinois Horse Racing Act of 1975. The Attorney General stated that, in order for the Board to be able to control the conduct of inter-track wagering and to prevent practices detrimental to the public, the Racing Board has the authority to promulgate regulations governing the accounting practices of racing organizations, and

therefore has the authority to promulgate reasonable rules to implement Section 26(h)(11). (Atty. Gen. Op. 84-001)

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APPENDIX A

HISTORY OF THE JOINT COMMITTEE ON ADMINISTRATIVE RULES AND THE ILLINOIS ADMINISTRATIVE PROCEDURE ACT

By the mid-1970's Illinois had 65 major agencies and nearly 250 smaller boards and commissions. The courts had ruled that administrative rules have the effect of law, and decisions rendered by those bodies conceivably affected the lives of more Illinois citizens than any other in government. Yet, observers of the scene found that organization among these agencies was complex, duplicative and chaotic. Indeed, at the time, no single source could produce a complete organization chart or even a listing of all Illinois agencies, boards and commissions. The goals of good government had been clear for generations. Government is accountable to the people for the effective, efficient and economic delivery of services. Toward this end, the federal government had enacted the federal Administrative Procedure Act in the 1940's, and in September 1975, the Governor signed Public Act 79-1083, effective September 22, 1975, creating the Illinois Administrative Procedure Act.

The Illinois Administrative Procedure Act established four categories of administrative proceedings: rules, contested cases, licenses and rate-making. The Governor's message accompanying the signing of the Act pointed out that this legislation formalized some common procedures, such as public hearings on proposed rules. The message also called the public petition procedures innovative and endorsed the establishment of rulemaking requirements. However, it soon became apparent that the establishment of rulemaking requirements would conflict with Section 2 of the Act which exempted agencies from compliance with any part of the Act except as expressly stated in the law which created or conferred power upon that agency.

In 1977, Section 2 was amended by Public Act 80-1035 (House Bill 14, effective September 27, 1977) to make the Act applicable to every agency, except as specified. Agencies have continued to claim an exemption because they are not an "agency," as defined in the Act, or to excuse lack of rules for on-going programs because legislation creating the program failed to specify that rulemaking was required. Most agencies, however, have cooperated in the rulemaking process. This has been particularly true since Illinois regulations were codified by the Office of the Secretary of State in January 1985. As a result, rulemaking is now more widely understood by both professionals and the affected public.

Public Act 80-1035 also created the Joint Committee on Administrative Rules in 1977. The functions of the Joint Committee under the amended Administrative Procedure Act can be broadly classified in two categories, an on-going review and comment function in relation to newly proposed rulemaking actions of State agencies, and a longer-term, more in-depth examination of groups of existing rules including a 5 year program to review each agency's rules and rulemaking process. For too long, said the first Chairman of the Joint Committee, Representative Harry Yourell, the legislature had been content to pass legislation without systematically ensuring that agencies charged with the task of implementing that legislation were properly interpreting and complying with the intent of the legislation. In addition to making the Act's rulemaking and hearing provisions applicable to all state agencies and the creation of the Joint Committee on Administrative Rules, Public Act 80-1035 made several

other changes in the Act, including creation of the Illinois Register, a weekly publication of the Secretary of State which informs the public of all rulemaking activity by State agencies.

The minutes of the monthly meetings during the first year show that the Joint Committee dealt with issues commonly facing a new organization, such as staffing and office space, as well as substantive issues about rulemaking and interpretations of The Illinois Administrative Procedure Act. For example, within the first few months, the Joint Committee had reviewed its powers and duties and, based on the separation of powers clause in the 1970 Illinois Constitution, found them to be advisory only. The Joint Committee sent guidelines to all State agencies to assist them in complying with provisions of the Act and prepared an amendment to clarify that all boards of State institutions of higher education were affected by the Act. By the third meeting in January 1978, the Joint Committee was reviewing proposed rules published in the Illinois Register. Objections were issued to several of the rules. At this time, all negotiations between the Joint Committee and a rulemaking agency took place at the monthly meeting, a practice that on occasion resulted in very long meetings. The question of court-ordered rule changes was first considered by the Joint Committee in February, 1978. A court had ordered an amendment to the Illinois Department of Public Aid's rule on physician services for medically necessary abortions for a public aid recipient. Legislation was drafted and presented at the March 23, 1978 meeting to establish a new category of rulemaking for rules required by court order or federal rules and regulations ("peremptory" rulemaking). But it was not until a year and a half later that the Act was amended by Public Act 81-1044 (effective October 1, 1979) to authorize this category of rulemaking.

By March 1978, the Joint Committee had established July 1, 1980 as the deadline for agencies to prepare and submit a compilation of all their rules. In addition, legislation was drafted to require that rules contain specific standards and criteria to permit the affected public to understand the basis on which agency discretion was to be used. This standards and criteria amendment did not become effective July 1, 1980 (Public Act 81-1129). In March 1978, the Joint Committee also discussed amending the Illinois Administrative Procedure Act to place the burden of proof upon agencies asserting the validity of contested rules in court cases involving rules which have been objected to by the Joint Committee, whenever such agencies have refused to remedy Joint Committee objections. This concept is yet to be enacted.

By the end of its first full year, the Joint Committee had reviewed nearly 500 rulemakings (Table 12, pages 62-65) and prepared a legislative package that contained 23 recommended bills.

In its second year of operation, 1979, the Joint Committee examined over 525 rulemakings, issued 65 statements of objection and implemented the five-year rules review program. Agency rulemaking increased in 1980 during which time the Joint Committee reviewed nearly 700 proposed, emergency and peremptory rulemakings and completed 9 detailed reviews of 28 sets of existing rules. Agency rulemaking has generally continued to increase during the nine years that the Joint Committee has compiled data. The tables show a comparison of general, emergency, and peremptory rulemaking from

1978 (1980 for emergency and peremptory) through 1986 (Tables 12, 13, and 14, pages 62-69) illustrate the rulemaking activity of State agencies during that time.

The Illinois Administrative Procedure Act has been continually evolving since 1977. In addition to the creation of the Joint Committee on Administrative Rules as an oversight body, which became a Legislative Support Services Agency in 1984, the Act has been amended to deal with numerous problems which have arisen. One of the most significant has been the implementation of the small business flexibility requirements imposed pursuant to Sections 3.10, 4.03, 5.01, and 7.06 of the Act. These Sections require agencies to consider the impact of rules upon small businesses and, if feasible, suggest alternatives to those rules. Several other legislative changes have been made in the Act to remedy specific problems. Public Act 84-469, effective January 1, 1986, provides that pay rates established pursuant to the Personnel Code can be amended using the peremptory rulemaking process within 30 days after such amendment is necessary due to a conflict between the rates and the terms of a collective bargaining agreement. Public Act 84-576, also effective January 1, 1986, prohibited agencies from using the peremptory rulemaking process to implement consent orders or other negotiated settlements. The Act also provides that emergency rulemaking may be used in these instances. Public Act 84-1329, effective September 9, 1986, permits the second notice period to be extended upon the mutual agreement of Joint Committee and the agency. Two new sections have been added to the Act. Section 5.04, effective January 1, 1985, provides that, under certain conditions, a rule can be automatically repealed, and Section 5a, effective July 1, 1986, provides for the publication of a regulatory agenda. The Act will continue to evolve as problems concerning administrative rulemaking arise.

appendix/ar1986

TABLE 12
COMPARISON OF GENERAL RULEMAKING BY AGENCY
1978 THROUGH 1986

AGENCY	1978	1979	1980	1981	1982	1983	1984	1985	1986
Abandoned Mined Lands Reclamation Council	-	-	-	1	-	-	2	-	2
Administrative Rules, Joint Committee on	3	5	1	1	1	-	-	3	5
Administrative Services, Department of (1)	1	-	7	7	1	-	-	-	-
Aggregate Mining Problems Study Commission	-	-	-	1	-	-	-	-	-
Aging, Department on	5	1	6	6	4	4	6	3	2
Agriculture, Department of	14	17	14	16	24	18	41	15	11
Alcoholism and Substance Abuse, Department of (2)	-	-	-	-	-	-	2	5	6
Attorney General	3	1	2	-	3	2	3	2	2
Auditor General	7	5	2	1	4	1	3	1	-
Banks and Trust Companies, Commissioner of	2	5	3	-	6	-	-	9	6
Capital Development Board	2	1	3	-	3	-	2	2	4
Carnival-Amusement Safety Board	-	-	-	-	-	-	-	-	2
Central Management Services, Department of (1)	-	-	-	-	3	16	18	10	14
Children and Family Services, Department of	2	2	60	1	26	10	23	14	22
Cities and Village Municipal Problems Commission	-	-	-	1	-	-	-	-	-
Civil Service Commission	-	-	-	2	-	-	2	-	-
Civil Service Merit Board, University	-	-	-	3	-	1	-	-	-
Civil Service System, State Universities	-	-	-	-	-	-	2	-	1
Commerce and Community Affairs, Department of	-	-	-	1	8	4	20	29	29
Commerce Commission, Illinois	-	-	-	10	21	19	43	22	20
Commission Review Board	-	-	-	-	-	-	-	-	1
Community College Board, Illinois	17	11	19	-	1	2	3	2	2
Comptroller	1	2	4	3	4	4	3	1	5
Condominium Study Commission, Joint	-	-	-	1	-	-	-	-	-
Conservation, Department of	76	92	75	108	33	34	36	34	33
Cook County Local Records Commission	-	-	-	-	-	-	-	-	1
Corrections, Department of	82	23	38	24	15	66	-	1	10
County Problems Commission	-	-	-	1	-	-	-	-	-
Court of Claims	-	-	-	-	-	-	-	-	-
Criminal Justice Information Authority, Illinois	1	2	-	-	-	-	-	1	1
Dangerous Drugs Advisory Council	-	-	-	2	-	-	-	-	-
Dangerous Drugs Commission (2)	-	-	-	2	3	3	2	-	-
Development Finance Authority	-	-	-	-	-	-	-	-	4
East St. Louis, Board of Trustees of the State	-	-	-	-	2	1	-	1	-
Community College of	-	3	2	5	-	-	20	5	3
Education, Board of Higher	-	-	-	-	-	2	1	1	2
Education Loan Authority, Illinois Independent Higher	-	4	9	8	3	7	5	12	30
Education, State Board of	3	-	-	-	-	-	-	-	-

TABLE 12
COMPARISON OF GENERAL RULEMAKING BY AGENCY
1978 THROUGH 1986
(continued)

AGENCY	1978	1979	1980	1981	1982	1983	1984	1985	1986
Educational Facilities Authority, Illinois	-	-	1	-	2	1	1	-	2
Educational Opportunity, Illinois Consortium For	-	-	-	-	-	-	-	-	1
Elections, State Board of	6	1	8	3	7	3	4	1	-
Emergency Services and Disaster Agency	-	-	-	2	9	7	-	-	3
Employment Security, Department of (3)	-	-	-	-	-	-	3	13	10
Energy and Natural Resources, Department of	-	-	-	-	2	1	-	3	-
Energy Resource Commission	-	-	-	1	1	-	-	-	-
Environmental Protection Agency	-	12	10	16	18	20	21	10	8
Experimental Organ Transplantation	7	-	-	-	-	-	-	-	-
Procedures Board, Illinois	-	-	-	-	-	-	-	1	1
Export Development Authority	-	-	-	-	-	-	-	1	1
Fair Employment Practices Commission	2	3	-	-	-	-	-	-	-
Farm Development Authority, Illinois	-	-	-	-	1	1	2	1	2
Financial Institutions, Department of	1	10	8	3	7	3	9	4	2
Fire Marshal, Office of the State	1	2	1	1	1	1	5	3	3
Governor's Purchased Care Review Board	1	6	2	1	-	2	1	1	-
Guardianship and Advocacy Commission	-	-	2	1	2	2	1	3	1
Health Care Cost Containment Council, Illinois	-	-	-	-	-	-	-	10	1
Health Coordinating Council, Statewide	4	1	-	2	-	-	-	-	-
Health Facilities Authority, Illinois	5	2	-	1	-	-	-	-	-
Health Facilities Planning Board	-	1	-	-	-	-	2	1	9
Health Finance Authority	-	1	5	1	1	-	-	-	1
Housing Development Authority, Illinois	-	-	1	-	-	3	3	5	1
Human Rights Commission	-	-	-	1	1	2	2	-	1
Human Rights, Department of	-	-	-	5	4	3	1	-	1
Illinois, Board of Trustees of the University of	-	-	-	1	-	1	1	1	1
Industrial Commission	4	1	3	2	3	1	2	7	2
Insurance, Department of	15	14	17	13	13	4	25	9	11
Investment, Illinois State Board of	-	3	1	-	1	2	-	-	-
Labor, Department of (3)	5	6	3	7	8	8	5	3	3
Labor Relations Board, Illinois Educational	-	-	-	-	-	-	4	3	-
Labor Relations Board, Illinois Local	-	-	-	-	-	-	4	1	8
Labor Relations Board, Illinois State	-	-	-	-	-	-	4	1	8
Law Enforcement Commission	-	-	-	2	-	-	-	-	-
Law Enforcement Merit Board, Department of	2	2	1	-	1	1	4	1	-
Legislative Information System	1	-	2	-	2	1	-	-	-
Liquor Control Commission, Illinois	-	-	-	-	-	1	-	-	-

TABLE 12
COMPARISON OF GENERAL RULEMAKING BY AGENCY
1978 THROUGH 1986
(continued)

AGENCY	1978	1979	1980	1981	1982	1983	1984	1985	1986
Local Government Affairs, Department of	1	-	3	-	-	-	-	-	-
Local Government Records Commission	-	1	-	-	-	-	-	-	-
Local Governmental Law Enforcement Officers Training Board, Illinois	-	-	-	-	-	4	1	-	2
Lottery, Department of (4)	-	2	-	-	-	-	-	-	2
Medical Center Commission	-	1	-	-	-	-	-	-	-
Mental Health and Developmental Disabilities, Department of	8	13	4	8	3	3	5	8	2
Military and Naval Department	-	-	-	-	-	-	-	1	-
Mines and Minerals, Department of	4	-	5	5	6	6	4	7	49
Mississippi River Parkway Commission	-	-	-	1	-	-	-	-	-
Natural Resources, Institute of	-	1	1	2	-	-	-	-	-
Nature Preserves Commission	-	-	-	-	-	1	-	-	-
Nuclear Safety, Department of	-	-	1	2	3	3	4	3	19
Nutrition, State Council on (1)	10	9	9	1	-	-	-	-	-
Personnel, Department of	18	11	18	13	9	-	-	-	-
Pollution Control Board	-	-	-	-	18	23	21	32	43
Prairie State 2000 Authority	-	-	-	-	-	-	-	-	2
Prisoner Review Board	-	-	-	-	1	-	-	1	-
Property Tax Appeal Board (5)	-	-	-	-	-	-	-	1	-
Public Aid, Department of	46	56	47	66	40	86	67	94	82
Public Health, Department of	42	43	55	44	92	91	53	25	44
Racing Board, Illinois	10	14	19	10	22	9	7	13	14
Regents, Board of	-	-	-	2	-	-	-	-	-
Registration and Education, Department of	11	11	22	15	16	15	26	17	10
Rehabilitation Services, Department of	-	-	3	1	6	23	28	13	57
Retirement System of Illinois, State Employees'	2	3	5	3	4	1	2	3	-
Retirement System of The State of Illinois, Teachers'	-	-	-	-	-	-	-	2	-
Retirement System, State Universities	-	-	-	-	-	1	-	-	-
Revenue, Department of (4)(5)	11	16	24	45	14	11	9	-	-
Savings and Loan Associations, Commissioner of	3	4	1	7	1	1	1	7	24
Scholarship Commission, State	-	-	-	11	4	2	1	2	1
Secretary of State	15	21	12	26	14	31	20	14	10
Select Joint Committee on Regulatory Agency Reform	-	-	-	2	-	-	-	19	8

TABLE 12
COMPARISON OF GENERAL RULEMAKING BY AGENCY
1978 THROUGH 1986
(continued)

AGENCY	1978	1979	1980	1981	1982	1983	1984	1985	1986
State Fair Agency	-	4	-	-	-	-	-	-	-
State Mandates Board of Appeals	-	-	-	-	1	-	-	-	-
State Police, Department of	2	-	1	-	1	2	2	1	2
State Police Merit Board, Department of	-	-	-	-	-	-	-	-	2
Transportation, Department of	13	13	13	17	5	5	10	16	23
Travel Control Board, Higher Education	-	1	1	1	2	-	-	1	-
Travel Control Board, Legislative	1	1	-	1	-	-	-	-	-
Treasurer	1	1	-	-	-	-	1	1	-
Veterans' Affairs, Department of	1	2	2	2	-	1	1	-	5
Visit and Examine State Institutions, Commission to	-	-	-	1	-	-	-	-	-
TOTAL	472	467	556	563	510	585	604	537	698

(1) The Department of Personnel and the Department of Administrative Services were combined in 1982, and the name was changed to the Department of Central Management Services.

(2) The Department of Alcoholism and Substance Abuse, once a division of the Dangerous Drug Commission, became a separate agency in 1984.

(3) The Department of Employment Security, once a bureau within the Department of Labor, became a separate agency in 1984.

(4) The Department of the Lottery, once a division of the Department of Revenue (Lottery Control Board), became a separate agency in 1986.

(5) The Property Tax Appeal Board, once a division of the Department of Revenue, became a separate agency in 1985.

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TABLE 13
COMPARISON OF EMERGENCY RULEMAKING BY AGENCY
1980 THROUGH 1986

AGENCY	1980	1981	1982	1983	1984	1985	1986
Abandoned Mined Lands Reclamation Council	-	-	-	-	-	-	2
Aging, Department on	1	1	1	-	-	-	-
Agriculture, Department of	2	1	-	-	1	2	1
Alcoholism and Substance Abuse, Department of (1)	-	-	-	-	1	1	2
Attorney General	-	-	-	-	-	1	-
Banks and Trust Companies, Commissioner of	3	-	1	-	-	-	2
Carnival-Amusement Safety Board	-	-	-	-	-	-	1
Capital Development Board	2	-	-	-	-	1	-
Central Management Services, Department of (2)	-	-	2	3	13	6	6
Children and Family Services, Department of	2	-	4	1	-	-	1
Commerce and Community Affairs, Department of	-	-	-	5	-	6	5
Commerce Commission, Illinois	5	-	2	-	3	1	5
Commission Review Board	-	-	-	-	-	-	1
Community College Board, Illinois	-	-	-	1	2	-	-
Comptroller	1	-	-	-	-	-	-
Conservation, Department of	13	13	3	4	1	7	2
Corrections, Department of	4	2	15	-	-	-	-
Criminal Justice Information Authority	-	-	-	-	-	1	-
Dangerous Drugs Commission	1	-	-	-	-	-	-
Development Finance Authority	-	-	-	-	-	-	2
Education, Board of Higher	-	1	-	-	1	-	-
Education Loan Authority, Illinois Independent Higher	-	-	-	1	-	-	-
Education, State Board of	3	1	-	3	-	9	5
Educational Opportunity, Illinois Consortium For	-	-	-	-	-	-	1
Elections, State Board of	4	4	2	1	2	-	-
Emergency Services and Disaster Agency	-	-	1	-	-	-	-
Employment Security, Department of (3)	-	-	-	-	3	-	-
Environmental Protection Agency	3	2	-	-	2	2	2
Experimental Organ Transplantation	-	-	-	-	-	-	-
Procedures Board, Illinois	-	-	-	-	-	-	-
Export Development Authority, Illinois	-	-	-	-	-	1	-
Farm Development Authority, Illinois	-	-	1	1	1	2	3
Financial Institutions, Department of	2	2	-	-	-	1	1
Fire Marshal, Office of the State	1	-	2	1	2	-	2
Governor's Purchased Care Review Board	1	-	-	-	-	-	-
Health Coordinating Council, Statewide	-	1	-	-	-	-	-
Housing Development Authority, Illinois	-	-	-	1	1	1	-
Human Rights, Department of	1	-	-	-	-	-	-

TABLE 13
COMPARISON OF EMERGENCY RULEMAKING BY AGENCY
1980 THROUGH 1986
(continued)

AGENCY	1980	1981	1982	1983	1984	1985	1986
Illinois, Board of Trustees of the University of	-	1	-	1	-	-	-
Industrial Commission	1	1	2	-	2	2	2
Insurance, Department of	4	2	2	3	-	1	5
Labor, Department of (3)	1	3	-	3	3	2	-
Labor Relations Board, Illinois Educational	-	-	-	-	4	1	-
Labor Relations Board, Illinois Local	-	-	-	-	4	-	-
Labor Relations Board, Illinois State	-	-	-	-	4	-	-
Law Enforcement Merit Board, Department of	1	-	-	-	2	-	-
Legislative Information System	1	-	1	1	-	-	-
Local Governmental Law Enforcement Officers Training Board, Illinois	-	-	-	1	-	-	1
Lottery, Department of	-	-	-	-	-	-	2
Mental Health and Developmental Disabilities, Department of	-	1	2	1	-	-	-
Mines and Minerals, Department of	1	1	3	1	-	-	-
Nuclear Safety, Department of	-	-	1	-	2	1	1
Personnel, Department of (2)	4	5	3	-	-	-	-
Pollution Control Board	1	3	1	1	3	3	2
Prairie State 2000 Authority	-	-	-	-	-	-	2
Public Aid, Department of	4	2	4	2	6	6	9
Public Health, Department of	11	1	15	2	2	2	3
Racing Board, Illinois	2	2	2	2	1	2	-
Regents, Board of	-	1	-	-	-	-	-
Registration and Education, Department of	2	2	5	5	6	1	1
Rehabilitation Services, Department of	-	-	1	-	-	-	3
Retirement System of Illinois, State Employees'	3	1	1	-	1	1	-
Revenue, Department of	9	2	3	-	1	-	2
Savings and Loan Associations, Commissioner of	1	1	-	-	-	1	1
Scholarship Commission, State	-	1	2	1	-	-	2
Secretary of State	-	2	1	3	3	6	2
State Mandates Board of Appeals	-	-	1	-	-	1	-
State Police, Department of	-	-	-	-	-	-	1
Transportation, Department of	2	-	-	-	1	1	1
Travel Regulation Council	-	-	-	-	-	-	-
Treasurer	-	-	-	-	-	1	-
Veterans' Affairs, Department of	-	-	-	-	-	-	1
TOTAL	97	60	84	49	78	73	87

TABLE 13
COMPARISON OF EMERGENCY RULEMAKING BY AGENCY
1980 THROUGH 1986
(continued)

- (1) The Department of Alcoholism and Substance Abuse, once a division of the Dangerous Drug Commission, became a separate agency in 1984.
- (2) The Department of Personnel and the Department of Administrative Services were combined in 1982, and the name was changed to the Department of Central Management Services.
- (3) The Department of Employment Security, once a bureau within the Department of Labor, became a separate agency in 1984.

TABLE 14
COMPARISON OF PEREMPTORY RULEMAKING BY AGENCY
1980 THROUGH 1986

<u>AGENCY</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>
Aging, Department on	1	-	-	-	-	-	-
Agriculture, Department of	-	-	-	-	-	9	10
Central Management Services, Department of	-	-	-	-	-	-	6
Children and Family Services, Department of	-	1	-	-	1	-	-
Commerce Commission, Illinois	-	-	1	-	-	-	-
Comptroller	-	-	1	-	-	-	-
Conservation, Department of	-	-	-	-	-	2	-
Corrections, Department of	-	1	3	1	-	-	-
Education, State Board of	7	-	-	1	-	-	-
Employment Security, Department of (1)	-	-	-	-	-	1	-
Labor, Department of (1)	-	1	-	-	-	-	-
Nature Preserves Commission	-	-	1	-	-	-	-
Pollution Control Board	4	3	7	10	11	9	14
Public Aid, Department of	5	22	6	3	9	2	3
Public Health, Department of	-	-	1	-	1	-	-
Retirement System of Illinois, State Employees'	-	-	-	1	-	-	-
	<u>17</u>	<u>27</u>	<u>21</u>	<u>16</u>	<u>22</u>	<u>23</u>	<u>33</u>
TOTAL							

(1) The Department of Employment Security, once a bureau within the Department of Labor, became a separate agency in 1984.

010:AR1986

January 5, 1987

THE ILLINOIS ADMINISTRATIVE PROCEDURE ACT

(Codified by West Publishing Company in Illinois Revised Statutes
at chapter 127, paragraphs 1001-1021.)

AN ACT in relation to administrative rules and procedures, and to amend an Act therein named and in connection therewith. (PA 79-1083, approved and effective September 22, 1975)

Section 1. SHORT TITLE) This Act shall be known and may be cited as "The Illinois Administrative Procedure Act." (PA 79-1083)

Section 2. APPLICABILITY) This Act applies to every agency as defined herein. Beginning January 1, 1978 in case of conflict between the provisions of this Act and the Act creating or conferring power on an agency, this Act shall control. However if an agency has existing procedures on July 1, 1977 specifically for contested cases or licensing those existing provisions control, except that this exception respecting contested cases and licensing does not apply if the Act creating or conferring power on the agency adopts by express reference the provision of this Act. Where the Act creating or conferring power on an agency establishes administrative procedures not covered by this Act, such procedures shall remain in effect.

The provisions of this Act shall not apply to (1) preliminary hearings, investigations or practices where no final determinations affecting State funding are made by the State Board of Education, (2) legal opinions issued under Section 2-3.7 of The School Code, (3) as to State colleges and universities, their disciplinary and grievance proceedings, academic irregularity and capricious grading proceedings, and admission standards and procedures, and (4) the class specifications for positions and individual position descriptions prepared and maintained pursuant to the "Personnel Code"; however such specifications shall be made reasonably available to the public for inspection and copying. Neither shall the provisions of this Act apply to hearings under Section 20 of the "Uniform Disposition of Unclaimed Property Act."

Pay rates established pursuant to Section 8a of the Personnel Code shall be amended or repealed pursuant to the process set forth in Section 5.03 within 30 days after it becomes necessary to do so due to a conflict between the rates and the terms of a collective bargaining agreement covering the compensation of an employee subject to that Code. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 80-1457, effective January 1, 1979; Amended by PA 81-1514, effective January 1, 1981; Amended by PA 83-0891, effective November 2, 1983; Amended by PA 84-22, effective July 18, 1985; Amended by PA 84-469, effective January 1, 1986)

Section 3. DEFINITIONS) As used in this Act, unless the context otherwise requires, the terms specified in Section 3.01 through 3.12 have the meanings ascribed to them in those Sections. (PA

79-1083; Amended by PA 82-0783, effective July 13, 1982; amended by PA 84-1452, effective January 5, 1987).

Section 3.01. AGENCY) "Agency" means each officer, board, commission and agency created by the Constitution, whether in the executive, legislative, or judicial branch of State government, but other than the circuit court; each officer, department, board, commission, agency, institution, authority, university, body politic and corporate of the State; and each administrative unit or corporate outgrowth of the State government which is created by or pursuant to statute, other than units of local government and their officers, school districts and boards of election commissioners; each administrative unit or corporate outgrowth of the above and as may be created by executive order of the Governor. However, "agency" does not include:

- (a) the House of Representatives and Senate, and their respective standing and service committees;
- (b) the Governor; and
- (c) the justices and judges of the Supreme and Appellate Courts.

No entity shall be considered an "agency" for the purposes of this Act unless authorized by law to make rules or to determine contested cases. (PA 79-1083; Amended by PA 80-1457, effective January 1, 1979)

Section 3.02. CONTESTED CASE) "Contested case" means an adjudicatory proceeding, not including rate-making, rulemaking, quasi-legislative, informational or similar proceedings, in which the individual legal rights, duties or privileges of a party are required by law to be determined by an agency only after an opportunity for hearing. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

Section 3.03. HEARING EXAMINER) "Hearing examiner" means the presiding officer or officers at the initial hearing before each agency and each continuation thereof. (PA 79-1083)

Section 3.04. LICENSE) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law, but it does not include a license required solely for revenue purposes. (PA 79-1083)

Section 3.05. LICENSING) "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license. (PA 79-1083)

Section 3.06. PARTY) "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party. (PA 79-1083)

Section 3.07. PERSON) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency. (PA 79-1083)

Section 3.08. RATE-MAKING OR RATE-MAKING ACTIVITIES) "Rate-making" or "Rate-making activities" means the establishment or review of or other exercise of control over the rates or charges for the products or services of any person, firm or corporation operating or transacting any business in this State. (PA 79-1083)

Section 3.09. RULE) "Rule" means each agency statement of general applicability that implements, applies, interprets, or prescribes law or policy, but does not include (a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to persons or entities outside the agency, (b) informal advisory rulings issued pursuant to Section 9, (c) intra-agency memoranda or (d) the prescription of standardized forms. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

Section 3.10. SMALL BUSINESS) For the purpose of this Act, "small business" means a concern, including its affiliates, which is independently owned and operated, not dominant in its field and which employs fewer than 50 full-time employees or which has gross annual sales of less than \$4 million. For purposes of a specific rule, an agency may define small business to include more persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of small businesses and organizations. (Added by PA 82-492, effective January 1, 1982)

Section 3.11. "Municipality" has the meaning ascribed to it in Section 1-1-2 of the Illinois Municipal Code. (Added by PA 84-1452, effective January 5, 1987).

Section 3.12. "Small municipality" means any municipality of 5,000 or fewer inhabitants and any municipality of more than 5,000 inhabitants which employs fewer than 50 persons full-time. For purposes of a specific rule, an agency may define small municipality to include employment of more than 50 persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of small municipalities. (Added by PA 84-1452, effective January 5, 1987)

Section 4. ADOPTION OF RULES: PUBLIC INFORMATION, AVAILABILITY OF RULES) (a) In addition to other rulemaking requirements imposed by law, each agency shall:

1. adopt rules of practice setting forth the nature and requirements of all formal hearings;
2. make available for public inspection all rules adopted by the agency in the discharge of its functions.

(b) Each agency shall make available for public inspection all final orders, decisions and opinions, except those deemed confidential by state or federal statute and any trade secrets.

(c) No agency rule is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection and filed with the Secretary of State as required by this Act. However, no Agency shall assert the invalidity of a rule which it has adopted pursuant to this Act

when an opposing party has relied upon such rule. (Amended by P.A. 83-1387, effective January 1, 1985; Amended by P.A. 83-1453, effective January 1, 1985)

(d) Rulemaking which creates or expands a State mandate on units of local government, school districts, or community college districts is subject to the State Mandates Act. The required Statement of Statewide Policy Objectives shall be published in the Illinois Register at the same time that the first notice under Section 5.01 is published or when the rule is published under Section 5.02 or 5.03. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 81-1562, effective January 16, 1981)

Section 4.01 REQUIRED RULES) (a) Each agency shall maintain as rules the following:

1. a current description of the agency's organization with necessary charts depicting same;
2. the current procedures on how the public can obtain information or make submissions or requests on subjects, programs, and activities of the agency;
3. tables of contents, indices, reference tables, and other materials to aid users in finding and using the agency's collection of rules currently in force; and
4. a current description of the agency's rulemaking procedures with necessary flow charts depicting same.

(b) The rules required to be filed by this Section may be adopted, amended, or repealed and filed as provided in this Section in lieu of any other provisions or requirements of this Act.

The rules required by this Section may be adopted, amended, or repealed by filing a certified copy with the Secretary of State as provided by paragraphs (a) and (b) of Section 6, and may become effective immediately. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)

Section 4.02. RULES IMPLEMENTING DISCRETIONARY POWERS: STANDARDS) Each rule which implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power. Such standards shall be stated as precisely and clearly as practicable under the conditions, to inform fully those persons affected. (Added by PA 81-1129, effective July 1, 1980)

Section 4.03. SMALL BUSINESS AND SMALL MUNICIPALITY FLEXIBILITY) When an agency proposes a new rule, or an amendment to an existing rule, which may have an impact on small businesses or small municipalities, the agency shall do each of the following: (a) The agency shall consider each of the following methods for reducing the impact of the rulemaking on small businesses or small municipalities. The agency shall reduce the impact by utilizing one or more of the following methods, if it finds that the methods are legal and feasible in meeting the statutory objectives which are the basis of the proposed rulemaking.

1. Establish less stringent compliance or reporting requirements in the rule for small businesses or small municipalities.
2. Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses or small municipalities.
3. Consolidate or simplify the rule's compliance or reporting requirements for small businesses or small municipalities.
4. Establish performance standards to replace design or operational standards in the rule for small businesses or small municipalities.
5. Exempt small businesses or small municipalities from any or all requirements of the rule.

(b) Prior to or during the notice period required under Section 5.01(a) of this Act, the agency shall provide an opportunity for small businesses or small municipalities to participate in the rulemaking process. The Agency shall utilize one or more of the following techniques. These techniques are in addition to other rulemaking requirements imposed by this Act or by any other Act.

1. The inclusion in any advance notice of possible rulemaking of a statement that the rule may have an impact on small businesses or small municipalities.
2. The publication of a notice of rulemaking in publications likely to be obtained by small businesses or small municipalities.
3. The direct notification of interested small businesses or small municipalities.
4. The conduct of public hearings concerning the impact of the rule on small businesses or small municipalities.
5. The use of special hearing or comment procedures to reduce the cost or complexity of participation in the rulemaking by small businesses or small municipalities.

(c) Prior to the notice period required under Section 5.01(a) of this Act, the agency shall notify the Business Assistance Office of the Department of Commerce and Community Affairs when rules affect businesses. The Business Assistance Office shall prepare an impact analysis of the rule describing its effect on small businesses. The impact analysis shall be completed within the notice period as described in subsection (a) of Section 5.01. Upon completion of the analysis the Business Assistance Office shall submit this analysis to both the Joint Committee on Administrative Rules and to the agency proposing the rule. The impact analysis shall contain the following:

1. A summary of the projected reporting, recordkeeping and other compliance requirements of the proposed rule.
2. A description of the types and an estimate of the number of small businesses to which the proposed rule will apply.
3. An estimate of the economic impact which the regulation will have on the various types of small businesses affected by the rulemaking.
4. A description of or a listing of alternatives to the proposed rule which would minimize the economic impact of the rule. Such alternative must be consistent with the stated objectives of the applicable statutes and regulations.

(Added by PA 82-492, effective January 1, 1982; Amended by PA 83-1341, effective September 7, 1984; Amended by PA 84-1452, effective January 5, 1987)

Section 5. PROCEDURE FOR RULEMAKING) (a) Prior to the adoption, amendment or repeal of any rule, each agency shall accomplish the actions required by Sections 5.01, 5.02 or 5.03, whichever is applicable.

(b) No action by any agency to adopt, amend or repeal a rule after this Act has become applicable to the agency shall be valid unless taken in compliance with this Section. A proceeding to contest any rule on the ground of non-compliance with the procedural requirements of this Section must be commenced within 2 years from the effective date of the rule.

(c) The notice and publication requirements of this Section do not apply to a matter relating solely to agency management, personnel practices, or to public property, loans or contracts. (PA 79-1083; Amended by PA 81-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)

Section 5a. REGULATORY AGENDA) An agency may submit for publication in the Illinois Register a regulatory agenda to elicit public comments concerning any rule which the agency is considering proposing but for which no notice or proposed rulemaking activity has been submitted to the Illinois Register. A regulatory agenda shall consist of summaries of such rules. Each summary shall, in less than 2,000 words contain insofar as practicable:

- (a) a description of the rule;
- (b) the statutory authority the agency is exercising;
- (c) a schedule of the dates for any hearings, meetings or other opportunities for public participation in the development of the rule;
- (d) the date the agency anticipates submitting a notice of proposed rulemaking activity, if known;
- (e) the name, address and telephone number of the agency representative, knowledgeable on such rule, from whom any information may be obtained and to whom written comments may be submitted concerning such rule;
- (f) a statement as to whether the rule will affect small businesses as defined in this Act; and
- (g) any other information which may serve the public interest.

Nothing in this Section shall preclude an agency from adopting a rule which has not been summarized in a regulatory agenda or from adopting a rule different than one summarized in a regulatory agenda; nothing in this Section shall require an agency to adopt a rule summarized in a regulatory agenda. The Secretary of State shall adopt rules necessary for the publication of a regulatory agenda, including but not limited to standard submission forms and deadlines. (Added by PA 84-954, effective July 1, 1986)

Section 5.01. GENERAL RULEMAKING) In all rulemaking to which Sections 5.02 and 5.03 do not apply, each agency shall:

(a) give at least 45 days' notice of its intended action to the general public. This first notice period shall commence on the first day the notice appears in the Illinois Register. The first notice shall include:

1. The text of the proposed rule, or the old and new materials of a proposed amendment, or the text of the provision to be repealed;
2. The specific statutory citation upon which the proposed rule, the proposed amendment to a rule or the proposed repeal of a rule is based and is authorized;
3. A complete description of the subjects and issues involved;
4. For all proposed rules and proposed amendments to rules, an initial regulatory flexibility analysis, which shall contain a description of the types of small businesses subject to the rule; a brief description of the proposed reporting, bookkeeping, and other procedures required for compliance with the rule; and a description of the types of professional skills necessary for compliance; and
5. The time, place and manner in which interested persons may present their views and comments concerning the proposed rulemaking.

During the first notice period, the agency shall provide all interested persons who submit a request to comment within the first 14 days of the notice period reasonable opportunity to submit data, views, arguments or comments, which may, in the discretion of the agency, be submitted either orally or in writing or both. The notice published in the Illinois Register shall indicate the manner selected by the agency for such submissions. The agency shall consider all submissions received.

The agency shall hold a public hearing on the proposed rulemaking, during the first notice period, in the following cases: (1) the agency finds that a public hearing would facilitate the submission of views and comments which might not otherwise be submitted; (2) the agency receives a request for a public hearing, within the first 14 days after publication of the notice of proposed rulemaking in the Illinois Register, from 25 interested persons, an association representing at least 100 interested persons, the Governor, the Joint Committee on Administrative Rules, or a unit of local government which may be affected. At the public hearing, the agency shall allow interested persons to present views and comments on the proposed rulemaking. Such a public hearing in response to a request for a hearing may not be held less than 20 days after the publication of the notice of proposed rulemaking in the Illinois Register, unless notice of the public hearing is included in the notice of proposed rulemaking. A public hearing on proposed rulemaking may not be held less than 10 days before submission of the notice required under paragraph (b) of this Section to the Joint Committee on Administrative Rules. Each agency may prescribe reasonable rules for the conduct of public hearings on proposed rulemaking to prevent undue repetition at such hearings. Such hearings must be open to the public and recorded by stenographic or mechanical means.

(b) provide up to 45 days additional notice of the proposed rulemaking to the Joint Committee on Administrative Rules. The period commencing on the day written notice is received by the Joint Committee shall be known as the second notice period, and shall expire 45 days thereafter unless prior to that time the agency and the Joint Committee have agreed to extend the second notice period beyond 45 days for a period not to exceed an additional 45 days, or the agency has received a statement of objection from the Joint Committee, or notification from the Joint Committee that no objection will be issued. The written notice to the Joint Committee shall include: (1) the text and location of any changes made to the proposed rulemaking during the first notice period; (2) for all proposed rules and proposed amendments to rules, a final regulatory flexibility analysis, which shall contain a summary of issues raised by small businesses during the first notice period; and a description of actions taken on any alternatives to the proposed rule suggested by small businesses during the first notice period, including reasons for rejecting any alternatives not utilized; and (3) if written request has been made by the Joint Committee within 30 days after initial notice appears in the Illinois Register pursuant to Paragraph (a) of this Section, an analysis of the economic and budgetary effects of the proposed rulemaking. After commencement of the second notice period, no substantive change may be made to a proposed rulemaking unless it is made in response to an objection or suggestion of the Joint Committee. The agency shall also send a copy of the final regulatory flexibility analysis to each of the small businesses which have presented views or comments on the proposed rulemaking during the first notice period and to any interested person who requests a copy during the first notice period. The agency may charge a reasonable fee for providing such copies to cover postage and handling costs.

(c) after the expiration of second notice period, after notification from the Joint Committee that no objection will be issued, or after response by the agency to a statement of objections issued by the Joint Committee, whichever is applicable, the agency shall file, pursuant to Section 6 of this Act, a certified copy of each rule, modification, or repeal of any rule adopted by it, which shall be published in the Illinois Register. Each rule hereafter adopted under this Section is effective upon filing, unless a later effective date is required by statute or is specified in the rule.

(d) no rule or modification or repeal of any rule may be adopted, or filed with the Secretary of State, more than one year after the date the first notice period for the rulemaking under paragraph (a) commenced. Any period during which the rulemaking is prohibited from being filed under Section 7.06a shall not be considered in calculating this one-year time period. In addition, no rule or modification which contains an incorporation by reference under subsection (b) of Section 6.02 may be adopted and filed with the Secretary of State pursuant to paragraph (c) of Section 5.01 and Section 6 of this Act unless the agency adopting and filing the rule is in receipt of written approval from the Joint Committee on Administrative Rules. This paragraph (d) applies to any rule or modification or repeal of any rule which has not been filed with the Secretary of State prior to the effective date of this amendatory Act of 1981. (Added by PA 81-1044, effective October 1, 1979; Amended by PA 82-242, effective January 1, 1982; Amended by

PA 82-492, effective January 1, 1982; Amended by PA 82-783, effective July 13, 1982; Amended by PA 84-784, effective January 1, 1986; Amended by PA 84-1329, effective September 9, 1986)

Section 5.02. EMERGENCY RULEMAKING) "Emergency" means the existence of any situation which any agency finds reasonably constitutes a threat to the public interest, safety or welfare. Where any agency finds that an emergency exists which requires adoption of a rule upon fewer days than is required by Section 5.01, and states in writing its reasons for that finding, the agency may adopt an emergency rule without prior notice or hearing, upon filing a notice of emergency rulemaking with the Secretary of State pursuant to Section 6.01 of this Act. Such notice shall include the text of the emergency rule and shall be published in the Illinois Register. Consent orders or other court orders adopting settlements negotiated by an agency may be adopted pursuant to this Section. Subject to applicable constitutional or statutory provisions, an emergency rule becomes effective immediately upon filing pursuant to Section 6, or at a stated date less than 10 days thereafter. The agency's finding and a statement of the specific reasons therefor shall be filed with the rule. The agency shall take reasonable and appropriate measures to make emergency rules known to the persons who may be affected by them.

An emergency rule may be effective for a period of not longer than 150 days, but the agency's authority to adopt an identical rule under Section 5.01 of this Act is not precluded. No emergency rule may be adopted more than once in any 24 month period, except that this limitation on the number of emergency rules which may be adopted in a 24 month period does not apply to emergency rules which make additions to and deletions from the Drug Manual pursuant to Section 5-5.16 of The Illinois Public Aid Code. Two or more emergency rules having substantially the same purpose and effect shall be deemed to be a single rule for purposes of this Section. (Added by PA 81-1044, effective October 1, 1979; Amended by PA 84-22, effective July 18, 1985; Amended by PA 84-576, effective January 1, 1986)

Section 5.03. PEREMPTORY RULEMAKING) "Peremptory rulemaking" means any rulemaking which is required as a result of federal law, federal rules and regulations, or an order of a court, under conditions which preclude compliance with general rulemaking requirements imposed by Section 5.01 and which preclude the exercise of discretion by the agency as to the content of the rule it is required to adopt. Peremptory rulemaking shall not be used to implement consent orders or other court orders adopting settlements negotiated by the agency. Where any agency finds that peremptory rulemaking is necessary and states in writing its reasons for that finding, the agency may adopt peremptory rulemaking upon filing a notice of rulemaking with the Secretary of State pursuant to Section 6.01 of this Act. Such notice shall be published in the Illinois Register. A rule adopted under the peremptory rulemaking provisions of this Section becomes effective immediately upon filing with the Secretary of State and in the agency's principal office, or at a date required or authorized by the relevant federal law, federal rules and regulations, or court order, as stated in the notice of rulemaking. Notice of rulemaking under this Section shall be published in the Illinois Register, and shall specifically refer to the

appropriate state or federal court order or federal law, rules and regulations, and shall be in such form as the Secretary of State may reasonably prescribe by rule. The agency shall file the notice of peremptory rulemaking within 30 days after a change in rules is required. (Added by PA 81-1044, effective October 1, 1979; Amended by PA 84-576, effective January 1, 1986)

Section 5.04. AUTOMATIC REPEAL OF RULES. A rule may provide for its automatic repeal on a date specified in the rule. The repeal shall be effective on the date specified, provided that notice of the repeal is published in the Illinois Register not less than 30 nor more than 60 days prior to the effective date of the repeal. This section shall not apply to any rules filed pursuant to Section 5.02 of this Act. (Added by P.A. 83-1387, effective January 1, 1985)

Section 6. FILING OF RULES) (a) Each agency shall file in the office of the Secretary of State and in the agency's principal office a certified copy of each rule and modification or repeal of any rule adopted by it. The Secretary of State and the agency shall each keep a permanent register of the rules open to public inspection.

(b) Concurrent with the filing of any rule pursuant to this Section, the filing agency shall submit to the Secretary of State for publication in the next available issue of the Illinois Register a notice of adopted rules. Such notice shall include:

1. The text of the adopted rule, which shall include: if the material is a new rule, the full text of the new rule; or if the material is an amendment to a rule or rules, the full text of the rule or rules as amended; or if the material is a repealer, such notice of repeal.
2. The name, address and telephone number of an individual who will be available to answer questions and provide information to the public concerning the adopted rules.
3. Such other information as the Secretary of State may by rule require in the interest of informing the public. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1979; Amended by PA 81-1044, effective October 1, 1979; Amended by PA 82-298, effective January 1, 1982)

Section 6.01. FORM AND PUBLICATION OF NOTICES) The Secretary of State may prescribe reasonable rules concerning the form of documents to be filed with him, and may refuse to accept for filing such certified copies as are not in compliance with such rules. In addition, the Secretary of State shall publish and maintain the Illinois Register and may prescribe reasonable rules setting forth the manner in which agencies shall submit notices required by this Act for publication in the Illinois Register. The Illinois Register shall be published at least once each week on the same day unless such day is an official State holiday in which case the Illinois Register shall be published on the next following business day and sent to subscribers who subscribe for the publication with the Secretary of State. The Secretary of State may charge a subscription price to subscribers that covers mailing and publication costs. (Added by PA 81-1044, effective October 1, 1979;

Amended by PA 82-689, effective July 1, 1982; Amended by PA 83-638, effective September 21, 1983)

Section 6.02. INCORPORATION BY REFERENCE) (a) An agency may incorporate by reference, in its rules adopted in accordance with Section 5 of this Act, rules and regulations of an agency of the United States or rules, regulations, standards and guidelines of a nationally recognized organization or association without publishing the incorporated material in full. The reference in the agency rules must fully identify the incorporated matter by location and date, and must state that the rule, regulation, standard or guideline does not include any later amendments or editions. The agency adopting the rule, regulation, standard or guideline shall maintain a copy of the referenced rule, regulation, standard or guideline and shall make it available to the public upon request for inspection and copying at no more than cost. An agency may also at its discretion file a copy of referenced rule, regulation, standard or guideline with the State Library. An agency may incorporate by reference such matters in its rules only if the agency, organization or association originally issuing the matter makes copies readily available to the public. This section shall not apply to any agency internal manual.

(b) As provided by this subsection, an agency may incorporate by reference in its rules adopted in accordance with Section 5.01 of this Act guidelines or standards of an agency of the United States, without publishing the incorporated material in full, provided that the incorporated material is readily available to the public. The reference in the agency rules must fully identify the incorporated matter by location and date, and must state that the guideline or standard does not include any later amendments or editions. An agency may incorporate by reference such matters in its rules only if the agency of the United States issuing or distributing the matter, or the organization, association or other entity acting on behalf of the agency of the United States makes copies readily available to the public. The agency adopting the rule shall maintain a copy of the referenced guideline or standard and shall make it available to the public upon request for inspection and copying at no more than cost. An agency may also at its discretion file a copy of referenced guidelines or standards with the State Library. Use of the incorporation by reference procedure under this subsection (b) must be approved by the Joint Committee on Administrative Rules prior to the submission of the written notice required pursuant to paragraph (b) of Section 5.01 of this Act. An agency seeking to adopt a rule containing incorporation by reference under this subsection (b) shall submit a written request to the Joint Committee on Administrative Rules. In determining whether to approve an incorporation by reference, the Joint Committee shall use the following standard: whether or not the material sought to be incorporated is readily available for public inspection. No rule which contains an incorporation by reference pursuant to this subsection (b) may be accepted by the Secretary of State for adoption and filing pursuant to paragraph (c) of Section 5.01 and Section 6 of this Act, unless the agency is in receipt of written approval from the Joint Committee on Administrative Rules. (Added by PA 83-638, effective September 21, 1983; Amended by PA 84-784, effective January 1, 1986)

Section 7. CODIFICATION OF RULES - PUBLICATION (a) The Secretary of State shall, by rule, prescribe a uniform system for the codification of rules on or before July 1, 1980. The Secretary of State shall also, by rule, establish a schedule for compliance with the uniform codification system on or before October 1, 1980. Such schedule may be by sections of the codification system and shall require approximately one-fourth of the rules to be converted to the codification system by each October 1, starting in 1981 and ending in 1984. All rules on file with the Secretary of State and in effect on October 1, 1984, shall be in compliance with the uniform system for the codification of rules. Rules not so codified as of October 1, 1984, are void, shall be withdrawn by the Secretary of State from the permanent register of the rules, and shall not be published by the Secretary of State in either the Illinois Administrative Code or in the Illinois Register. The Secretary of State shall not adopt any codification system or schedule under this subsection without the approval of the Joint Committee on Administrative Rules. Approval by the Joint Committee shall be conditioned solely upon establishing that the proposed codification system and schedule are compatible with existing electronic data processing equipment and programs maintained by and for the General Assembly. Nothing in this Section shall prohibit an agency from adopting rules in compliance with the codification system earlier than specified in the schedule.

(b) If no substantive changes are made by the agency in amending existing rules to comply with the codification system, such codified rules may be adopted until October 1, 1984, without requiring notice or publication of the text of rules pursuant to Section 5. In such a case, the publication requirement shall be satisfied by the publication in the Illinois Register of a notice stating that the agency has adopted the rules to comply with the codification system, that no substantive changes have been made in the rules and that the State Library has reviewed and approved the codification of the rules. The notice shall include the current names and numbers of the rules being codified, an outline of the headings of the sections of the rules as codified and may also include a table indicating the relationship between any rule numbers previously used by the agency and the numbering system of the codified rules. The agency shall provide the text of such rules as codified to the State Library for review and necessary changes and recommendations at least 30 days prior to the publication of such notice. Whenever the codification of an emergency or peremptory rule is changed subsequent to its publication as adopted in the Illinois Register, a notice of such change, in the manner set forth in this subsection, shall be published in the next available issue of the Illinois Register. Such a change in the rule's codification shall not affect its validity or the date upon which it became effective.

(c) Each rule proposed in compliance with the codification system shall be reviewed by the State Library under the Secretary of State prior to the expiration of the public notice period provided by Section 5.01 (a) of this Act or prior to the publication of the notice required under subsection (b) of this section. The State Library shall cooperate with agencies in its review to insure that the purposes of the codification system are accomplished. The State Library shall have the authority to make changes in the numbering and location of the rule in

the codification scheme, providing such changes do not affect the meaning of the rules. The State Library may recommend changes in the sectioning and headings proposed by the agency and suggest grammatical and technical changes to correct errors. The State Library may add notes concerning the statutory authority, dates proposed and adopted and other similar notes to the text of the rules, if such notes are not supplied by the agency. This review by the State Library shall be for the purpose of insuring the uniformity of and compliance with the codification system. The State Library shall prepare indexes by agency, subject matter, and statutory authority and any other necessary indexes, tables and other aids for locating rules to assist the public in the use of the Code.

(d) The State Library shall make available to the agency and the Joint Committee on Administrative Rules copies of the changes in the numbering and location of the rule in the codification scheme, the recommended changes in the sectioning and headings, and the suggestions made concerning the correction of grammatical and technical errors or other suggested changes. The agency shall in the notice required by Section 5.01(b) of this Act, or if such notice is not required, at least 10 days prior to the publication of the notice required under subsection (b) of this Section, provide to the Joint Committee a response to the recommendations of the State Library including any reasons for not adopting the recommendations.

(e) In the case of reorganization of agencies, transfer of functions between agencies, or abolishment of agencies by executive order or law, which affects rules on file with the Secretary of State, the State Library shall notify the Governor, the Attorney General, and the agencies involved of the effects upon such rules on file. If the Governor or the agencies involved do not respond to the State Library's notice within 45 days by instructing the State Library to delete or transfer the rules, the State Library may delete or place such rules under the appropriate agency for the purpose of insuring the consistency of the codification scheme and shall notify the Governor, the Attorney General and the agencies involved.

(f) The Secretary of State shall publish an Illinois Administrative Code as effective January 1, 1985. The code shall be published on or before June 1, 1985, and the Secretary of State shall update each section of the Code at least annually thereafter. Such Code shall contain the complete text of all rules of all State agencies filed with his office and effective on October 1, 1984, or later and the indexes, tables, and other aids for locating rules prepared by the State Library. The Secretary of State shall design the Illinois Register to supplement such Code. The Secretary of State shall make copies of the Code available generally at a price covering publication and mailing costs.

(g) The publication of a rule in the Code or in the Illinois Register as an adopted rule shall establish a rebuttable presumption that the rule was duly filed and that the text of the rule as published in the Code is the text of the rule as adopted. Publication of the text of a rule in any other location whether by the agency or some other person shall not be taken as establishing such presumption. Judicial

notice shall be taken of the text of each rule published in the Code or Register.

(h) The codification system, the indexes, tables, and other aids for locating rules prepared by the State Library, notes and other materials developed under this Section in connection with the publication of the Illinois Administrative Code shall be the property of the State. No person may attempt to copyright or publish for sale such materials except the Secretary of State as provided in this Section. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 80-1457, effective January 1, 1979; Amended by PA 81-1348, effective July 16, 1980; Amended by PA 83-555, effective January 1, 1984; Amended by PA 83-556, effective January 1, 1984; Amended by PA 83-1362, effective September 11, 1984)

Section 7.01. CERTIFICATION OF RULES FILED WITH THE SECRETARY OF STATE) (a) Beginning January 1, 1978, whenever a rule, or modification or repeal of any rule, is filed with the Secretary of State, the Secretary of State within three working days after such filing shall send a certified copy of such rule, modification or repeal to the Joint Committee on Administrative Rules established in Section 7.02.

(b) Any rule on file with the Secretary of State on January 1, 1978 shall be void 60 days after that date unless within such 60 day period the issuing agency certifies to the Secretary of State that the rule is currently in effect.

Within 45 days after the receipt of any certification pursuant to this sub-section (b), the Secretary of State shall send to the Joint Committee on Administrative Rules established in Section 7.02 a copy of each agency's certification so received along with a copy of the rules covered by the certification. (Added by PA 80-1035, effective September 27, 1977)

Section 7.02. ESTABLISHMENT AS LEGISLATIVE SUPPORT SERVICES AGENCY - AGENDA - PUBLICATION OF INFORMATION - FEES) The Joint Committee on Administrative Rules is established as a legislative support services agency subject to the Legislative Commission Reorganization Act of 1984.

When feasible the agenda of each meeting of the Joint Committee shall be submitted to the Secretary of State to be published at least 5 days prior to the meeting in the Illinois Register. The Joint Committee may also weekly, or as often as necessary, submit for publication in the Illinois Register lists of the dates on which notices under Section 5.01 of this Act were received and the dates on which the proposed rulemakings will be considered. The provisions of this subsection shall not prohibit the Joint Committee from acting upon an item that was not contained in the published agenda.

The Joint Committee may charge reasonable fees for copies of documents or publications to cover the cost of copying or printing. However, the Joint Committee shall provide copies of documents or publications without cost to agencies which are directly affected by recommendations or findings included in such documents or publications.

(Added by PA 80-1035, effective September 27, 1977; Amended by PA 80-1457, effective January 1, 1979; Amended by PA 82-372, effective September 2, 1981; Amended by PA 83-638, effective September 21, 1983; Amended by PA 83-1257, effective August 15, 1984)

Section 7.03. ADMINISTRATION OF OATHS OR AFFIRMATIONS - AFFIDAVITS OR DEPOSITIONS - SUBPOENA) (a) The Executive Director of the Joint Committee or any person designated by him may administer oaths or affirmations, take affidavits or depositions of any person.

(b) The Executive Director, upon approval of a majority vote of the Joint Committee, or the presiding officers may subpoena and compel the attendance before the Joint Committee and examine under oath any person, or the production for the Joint Committee of any records, books, papers, contracts or other documents.

If any person fails to obey a subpoena issued under this Section, the Joint Committee may apply to any circuit court to secure compliance with the subpoena. The failure to comply with the order of the court issued in response thereto shall be punished as a contempt. (Added by PA 80-1035, effective September 27, 1977)

Section 7.04. POWERS OF JOINT COMMITTEE) The Joint Committee shall have the following powers under this Act:

1. The function of the Joint Committee shall be the promotion of adequate and proper rules by agencies and an understanding on the part of the public respecting such rules. Such function shall be advisory only, except as provided in Sections 7.06a and 7.07a.

2. The Joint Committee may undertake studies and investigations concerning rulemaking and agency rules.

3. The Joint Committee shall monitor and investigate compliance of agencies with the provisions of this Act, make periodic investigations of the rulemaking activities of all agencies, and evaluate and report on all rules in terms of their propriety, legal adequacy, relation to statutory authorization, economic and budgetary effects and public policy.

4. Hearings and investigations conducted by the Joint Committee under this Act may be held at such times and places within the State as such Committee deems necessary.

5. The Joint Committee shall have the authority to request from any agency an analysis of the:

a. effect of a new rule, amendment or repealer, including any direct economic effect on the persons regulated by the rule; any anticipated effect on the proposing agency's budget and the budgets of other State agencies; and any anticipated effects on State revenues;

b. agency's evaluation of the submissions presented to the agency pursuant to Section 5.01 of this Act;

c. a description of any modifications from the initially published proposal made in the finally accepted version of the intended rule, amendment or repealer;

d. agency's justification and rationale for the intended rule, amendment or repealer.

6. Failure of the Joint Committee to object to any proposed rule, amendment, or repealer or any existing rule shall not be construed as implying direct or indirect approval of the rule or proposed rule, amendment, or repealer by the Joint Committee or the General Assembly. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 80-1044, effective October 1, 1978; Amended by PA 81-1035, effective January 1, 1980; Amended by PA 81-1514, effective January 1, 1981)

Section 7.05. RESPONSIBILITIES OF JOINT COMMITTEE) The Joint Committee shall have the following responsibilities under this Act:

1. The Joint Committee shall conduct a systematic and continuing study of the rules and rulemaking process of all state agencies, including those agencies not covered in Section 3.01 of this Act, for the purpose of improving the rulemaking process, reducing the number and bulk of rules, removing redundancies and unnecessary repetitions and correcting grammatical, typographical and like errors not affecting the construction or meaning of the rules, and it shall make recommendations to the appropriate affected agency.

2. The Joint Committee shall review the statutory authority on which any administrative rule is based.

3. The Joint Committee shall maintain a review program, to study the impact of legislative changes, court rulings and administrative action on agency rules and rulemaking.

4. The Joint Committee shall suggest rulemaking of an agency whenever the Joint Committee, in the course of its review of the agency's rules under this Act, determines that the agency's rules are incomplete, inconsistent or otherwise deficient. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)

Section 7.06. EXAMINATION OF PROPOSED RULE, AMENDMENT OR REPEAL OF RULE BY THE JOINT COMMITTEE - DETERMINATIONS - EVALUATION OF STATE FORMS) (a) The Joint Committee may examine any proposed rule, amendment to a rule, and repeal of a rule for the purpose of determining whether the proposed rule, amendment to a rule, or repeal of a rule is within the statutory authority upon which it is based, whether the rule, amendment to a rule or repeal of a rule is in proper form and whether the notice was given prior to its adoption, amendment, or repeal and was sufficient to give adequate notice of the purpose and effect of the rule, amendment or repeal. In addition, the Joint Committee may consider whether the agency has considered alternatives to the rule which are consistent with the stated objectives of both the applicable statutes and regulations, and whether the rule is designed to minimize economic impact on small businesses.

(b) If the Joint Committee objects to a proposed rule, amendment to a rule, or repeal of a rule, it shall certify the fact to the issuing agency and include with the certification a statement of its specific objections.

(c) If within the second notice period, the Joint Committee certifies its objections to the issuing agency then that agency shall within 90 days of receipt of the statement of objection:

1. modify the proposed rule, amendment or repealer to meet the Joint Committee's objections;
2. withdraw the proposed rule, amendment, or repealer in its entirety, or;
3. refuse to modify or withdraw the proposed rule, amendment or repealer.

(d) If an agency elects to modify a proposed rule, amendment or repealer to meet the Joint Committee's objections, it shall make such modifications as are necessary to meet the objections and shall resubmit the rule, amendment or repealer to the Joint Committee. In addition, the agency shall submit a notice of its election to modify the proposed rule, amendment or repealer to meet the Joint Committee's objections to the Secretary of State, which notice shall be published in the first available issue of the Illinois Register, but the agency shall not be required to conduct a public hearing. If the Joint Committee determines that the modifications do not remedy the Joint Committee's objections, it shall so notify the agency in writing and shall submit a copy of such notification to the Secretary of State for publication in the next available issue of the Illinois Register. In addition, the Joint Committee may recommend legislative action as provided in subsection (g) for agency refusals.

(e) If an agency elects to withdraw a proposed rule, amendment or repealer as a result of the Joint Committee's objections, it shall notify the Joint Committee, in writing, of its election and shall submit a notice of the withdrawal to the Secretary of State which shall be published in the next available issue of the Illinois Register.

(f) Failure of an agency to respond to the Joint Committee's objections to a proposed rule, amendment or repealer, within the time prescribed in subsection (c) shall constitute withdrawal of the proposed rule, amendment or repealer in its entirety. The Joint Committee shall submit a notice to that effect to the Secretary of State which shall be published in the next available issue of the Illinois Register and the Secretary of State shall refuse to accept for filing a certified copy of such proposed rule, amendment or repealer under the provisions of Section 6.

(g) If an agency refuses to modify or withdraw the proposed rule, amendment or repealer so as to remedy an objection stated by the Joint Committee, it shall notify the Joint Committee in writing of its refusal and shall submit a notice of refusal to the Secretary of State which shall be published in the next available issue of the Illinois Register. If the Joint Committee decides to recommend legislative action in response to an agency refusal, then the Joint Committee shall have drafted and have introduced into either house of the General Assembly appropriate legislation to implement the recommendations of the Joint Committee.

(h) No rule, amendment or repeal of a rule shall be accepted by the Secretary of State for filing under Section 6, if such rulemaking is subject to this Section, until after the agency has responded to the objections of the Joint Committee as provided in this Section.

(i) The Joint Committee shall evaluate and analyze all State forms which have been developed or revised after the effective date of this amendatory Act of 1984 to ascertain the burden, if any, of complying with such forms by small businesses. Such evaluation and analysis shall occur during the Joint Committee's review conducted pursuant to Section 7.08 of this Act. In the event the Joint Committee determines that any such form is unduly burdensome to small businesses the Joint Committee may object to such form or make specific recommendations for change in such form. Objections to such forms shall be made in the manner prescribed in Section 7.07 of this Act. For the purposes of this subsection the terms "state form" and "form" shall mean any document or piece of paper used by a state agency requesting or transmitting information, printed or reproduced by whatever means, usually with blank spaces for the entry of additional information to be used in any transaction between the State of Illinois and private sector businesses. These include but are not limited to grant applications, licensing applications, permit applications, and request for proposal applications, but do not include books, pamphlets, newsletters and intra-agency forms which do not affect the rights of or procedures available to persons or entities outside the State agency. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979; Amended by PA 83-1341, effective September 7, 1984; Amended by PA 84-1329, effective September 9, 1986)

Section 7.06a. JOINT COMMITTEE STATEMENT ON PROPOSED RULE, AMENDMENT OR REPEALER OBJECTIONABLE UNDER COMMITTEE'S REVIEW STANDARDS) (a) If the Joint Committee determines that adoption and effectiveness of a proposed rule, amendment or repealer or portion of a proposed rule, amendment or repealer by an agency would be objectionable under any of the standards for the Joint Committee's review specified in Sections 7.04, 7.05, 7.06, 7.07 or 7.08 of this Act and would constitute a serious threat to the public interest, safety or welfare, the Joint Committee may at any time prior to the taking effect of such proposed rule, amendment or repealer issue a statement to that effect. Such statement may be issued by the Joint Committee only upon the affirmative vote of three-fifths of the members appointed to the Joint Committee. A certified copy of such statement shall be transmitted to the proposing agency and to the Secretary of State for publication in the next available issue of the Illinois Register.

(b) The proposed rule, amendment or repealer or the portion of the proposed rule, amendment or repealer to which the Joint Committee has issued a statement under subsection (a) shall not be accepted for filing by the Secretary of State nor take effect for at least 180 days from receipt of the statement by the Secretary of State. The agency may not enforce or invoke for any reason a proposed rule, amendment or repealer or any portion thereof which is prohibited from being filed by this subsection during this 180 day period.

(c) The Joint Committee shall, as soon as practicable after the issuance of a statement under subsection (a), introduce in either house of the General Assembly a Joint resolution stating that the General Assembly desires to continue the prohibition of the proposed rule, amendment or repealer or the portion thereof to which the statement was issued from being filed and taking effect. The joint resolution shall immediately following its first reading be placed on the calendar for consideration in each house of the General Assembly without reference to a standing committee. If such a joint resolution is passed by both houses of the General Assembly within the 180 day period provided in subsection (b), the agency shall be prohibited from filing the proposed rule, amendment or repealer or the portion thereof and the proposed rule, amendment or repealer or the portion thereof shall not take effect. The Secretary of State shall not accept for filing the proposed rule, amendment or repealer or the portion thereof which the General Assembly has prohibited the agency from filing as provided in this subsection. If the 180 day period provided in subsection (b) expires prior to passage of the joint resolution, the agency may file the proposed rule, amendment or repealer or the portion thereof as adopted and it shall take effect. (Added by PA 81-1514, effective January 1, 1981; Amended by PA 82-372, effective September 2, 1981)

Section 7.07. EXAMINATION OF RULE BY THE JOINT COMMITTEE - DETERMINATION) (a) The Joint Committee may examine any rule for the purpose of determining whether the rule is within the statutory authority upon which it is based, and whether the rule is in proper form.

(b) If the Joint Committee objects to a rule, it shall, within 5 days of the objection, certify the fact to the adopting agency and include within the certification a statement of its specific objections.

(c) Within 90 days of receipt of the certification, the agency shall:

1. Notify the Joint Committee that it has elected to amend the rule to meet the Joint Committee's objection;
2. Notify the Joint Committee that it has elected to repeal the rule, or;
3. Notify the Joint Committee that it refuses to amend or repeal the rule.

(d) If the agency elects to amend a rule to meet the Joint Committee's objections, it shall notify the Joint Committee in writing and shall initiate rulemaking procedures for that purpose by giving notice as required by Section 5 of this Act. The Joint Committee shall give priority to rules so amended when setting its agenda.

(e) If the agency elects to repeal a rule as a result of the Joint Committee objections, it shall notify the Joint Committee, in writing, of its election and shall initiate rulemaking procedures for that purpose by giving notice as required by Section 5 of this Act.

(f) If the agency elects to amend or repeal a rule as a result of the Joint Committee objections, it shall complete the process within 180 days after giving notice in the Illinois Register.

(g) Failure of the agency to respond to the Joint Committee's objections to a rule within the time prescribed in subsection (c) shall constitute a refusal to amend or repeal the rule.

(h) If an agency refuses to amend or repeal a rule so as to remedy an objection stated by the Joint Committee, it shall notify the Joint Committee in writing of its refusal and shall submit a notice of refusal to the Secretary of State which shall be published in the next available issue of the Illinois Register. If the Joint Committee, in response to an agency refusal, decides to recommend legislative action, then the Joint Committee shall have drafted and have introduced into either house of the General Assembly appropriate legislation to implement the recommendations of the Joint Committee. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)

Section 7.07a. JOINT COMMITTEE STATEMENT ON RULE ADOPTED UNDER SECTIONS 5.02 OR 5.03 AND DEEMED OBJECTIONABLE UNDER COMMITTEE'S REVIEW STANDARDS) (a) If the Joint Committee determines that a rule or portion of a rule adopted under Sections 5.02 or 5.03 of this Act is objectionable under any of the standards for the Joint Committee's review specified in Sections 7.04, 7.05, 7.06, 7.07, or 7.08 of this Act and constitutes a serious threat to the public interest, safety or welfare, the Joint Committee may issue a statement to that effect. Such statement may be issued by the Joint Committee only upon the affirmative vote of three-fifths of the members appointed to the Joint Committee. A certified copy of such statement shall be transmitted to the affected agency and to the Secretary of State for publication in the next available issue of the Illinois Register.

(b) The effectiveness of the rule or the portion of a rule shall be suspended immediately for at least 180 days upon receipt of the certified statement by the Secretary of State. The Secretary of State shall indicate such suspension prominently and clearly on the face of the affected rule or the portion of a rule filed in the Office of the Secretary of State. Rules or portions of rules suspended in accordance with this subsection shall become effective again upon the expiration of 180 days from receipt of the statement by the Secretary of State if the General Assembly does not continue the suspension as provided in subsection (c). The agency may not enforce, nor invoke for any reason, a rule or portion of a rule which has been suspended in accordance with this subsection. During the 180 day period, the agency may not file, nor may the Secretary of State accept for filing, any rule having substantially the same purpose and effect as rules or portions of rules suspended in accordance with this subsection.

(c) The Joint Committee shall, as soon as practicable after issuance of a statement under subsection (a), cause to be introduced in either house of the General Assembly a joint resolution stating that the General Assembly desires to continue the suspension of effectiveness of a rule or the portion of the rule to which the statement was issued.

The joint resolution shall immediately following its first reading be placed on the calendar for consideration in each house of the General Assembly without reference to a standing committee. If such a joint resolution is passed by both houses of the General Assembly within the 180 day period provided in subsection (b), the rule or the portion of the rule shall be considered repealed and the Secretary of State shall immediately remove such rule or portion of a rule from the collection of effective rules. (Added by PA 81-1514, effective January 1, 1981; Amended by PA 82-372, effective September 2, 1981)

Section 7.08. PERIODIC EVALUATION OF RULES BY JOINT COMMITTEE - CATEGORIES) (a) The Joint Committee shall evaluate the rules of each agency at least once every 5 years. The Joint Committee, by rule shall develop a schedule for this periodic evaluation. In developing this schedule, the Joint Committee shall group rules by specified areas to assure the evaluation of similar rules at the same time. Such schedule shall include at least the following categories:

1. human resources;
2. law enforcement;
3. energy;
4. environment;
5. natural resources;
6. transportation;
7. public utilities;
8. consumer protection;
9. licensing laws;
10. regulation of occupations;
11. labor laws;
12. business regulation;
13. financial institutions; and
14. government purchasing.

(b) Whenever evaluating any rules as required by this Section the Joint Committee's review shall include an examination of:

1. organizational, structural and procedural reforms which effect rules or rulemaking;
2. merger, modification, establishment or abolition of regulations;
3. eliminating or phasing out outdated, overlapping or conflicting regulatory jurisdictions or requirements of general applicability; and
4. economic and budgetary effects. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1035, effective October 1, 1979)

Section 7.09. ADMINISTRATION OF ACT) The Joint Committee shall have the authority to adopt rules to administer the provisions of this Act relating to the Joint Committee's responsibilities, powers and duties. (Added by PA 80-1035, effective September 27, 1977)

Section 7.10. REPORT OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS BY THE JOINT COMMITTEE) The Joint Committee shall report its findings, conclusions and recommendations including

(b) Opportunity shall be afforded all parties to be represented by legal counsel, and to respond and present evidence and argument.

(c) Unless precluded by law, disposition may be made of any contested case by stipulation, agreed settlement, consent order or default. (PA 79-1083)

Section 11. RECORD IN CONTESTED CASES) (a) The record in a contested case shall include:

1. all pleadings (including all notices and responses thereto), motions and rulings;
2. evidence received;
3. a statement of matters officially noticed;
4. offers of proof, objections and rulings thereon;
5. proposed findings and exceptions;
6. any decision, opinion or report by the hearing examiner;
7. all staff memoranda or data submitted to the hearing examiner or members of the agency in connection with their consideration of the case; and
8. any communication prohibited by Section 15 of this Act, but such communications shall not form the basis for any finding of fact.

(b) Oral proceedings or any part thereof shall be recorded stenographically or by such other means as to adequately insure the preservation of such testimony or oral proceedings and shall be transcribed on request of any party.

(c) Findings of fact shall be based exclusively on the evidence and on matters officially noticed. (PA 79-1083; Amended by PA 82-783, effective July 13, 1982)

Section 12. RULES OF EVIDENCE - OFFICIAL NOTICE) In contested cases: (a) Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The rules of evidence and privilege as applied in civil cases in the Circuit Courts of this State shall be followed. However, evidence not admissible under such rules of evidence may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, any part of the evidence may be received in written form.

(b) Subject to the evidentiary requirements of subsection (a) of this Section, a party may conduct cross-examination required for a full and fair disclosure of the facts.

(c) Notice may be taken of matters of which the Circuit Courts of this State may take judicial notice. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall

suggested legislation to the General Assembly by February 1, of each year.

The requirement for reporting to the General Assembly shall be satisfied by filing copies of the report with the Speaker, the Minority Leader and the Clerk of the House of Representatives and the President, the Minority Leader and the Secretary of the Senate and the Legislative Council, as required by Section 3.1 of "An Act to revise the law in relation to the General Assembly", approved February 25, 1874, as amended, and filing such additional copies with the State Government Report Distribution Center for the General Assembly as is required under paragraph (t) of Section 7 of the State Library Act. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 83-784, effective January 1, 1984)

Section 8. PETITION FOR ADOPTION OF RULES) (a) An agency shall, in accordance with Section 5, adopt rules which implement recently enacted legislation of the General Assembly in a timely and expeditious manner.

(b) Any interested person may petition an agency requesting the promulgation, amendment or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration and disposition. If, within 30 days after submission of a petition, the agency has not initiated rulemaking proceedings in accordance with Section 5 of this Act, the petition shall be deemed to have been denied. (PA 79-1083; Amended by PA 83-529, effective January 1, 1984)

Section 9. DECLARATORY RULINGS BY AGENCIES) Each agency may in its discretion provide by rule for the filing and prompt disposition of petitions or requests for declaratory rulings as to the applicability to the person presenting the petition or request of any statutory provision enforced by the agency or of any rule of the agency. Declaratory rulings shall not be appealable. The agency shall maintain as a public record in the agency's principal office and make available for public inspection and copying any such rulings. The agency shall delete trade secrets or other confidential information from the ruling prior to making it available. (PA 79-1083; Amended by PA 82-727, effective November 12, 1981)

Section 10. CONTESTED CASES - NOTICE - HEARING) (a) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice. Such notice shall be served personally or by certified or registered mail upon such parties or their agents appointed to receive service of process and shall include:

1. a statement of the time, place and nature of the hearing;
2. a statement of the legal authority and jurisdiction under which the hearing is to be held;
3. a reference to the particular Sections of the statutes and rules involved; and
4. except where a more detailed statement is otherwise provided for by law, a short and plain statement of the matters asserted.

be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence. (PA 79-1083)

Section 13. PROPOSAL FOR DECISION) Except where otherwise expressly provided by law, when in a contested case a majority of the officials of the agency who are to render the final decision has not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency, shall not be made until a proposal for decision is served upon the parties, and an opportunity is afforded to each party adversely affected to file exceptions and to present a brief and, if the agency so permits, oral argument, to the agency officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision, prepared by the persons who conducted the hearing or one who has read the record. (PA 79-1083)

Section 14. DECISIONS AND ORDERS) A final decision or order adverse to a party (other than the agency) in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties or their agents appointed to receive service of process shall be notified either personally or by registered or certified mail of any decision or order. Upon request, a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.

A decision by any agency in a contested case under this Act shall be void unless the proceedings are conducted in compliance with the provisions of this Act relating to contested cases except to the extent such provisions are waived pursuant to Section 18 of this Act and except to the extent the agency has adopted its own rules for contested cases as authorized in Section 2 of this Act. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

Section 14.1 EXPENSES - ATTORNEY FEES) (a) In any contested case initiated by any agency which does not proceed to court for judicial review and on any issue where a court does not have jurisdiction to make an award of litigation expenses under Section 42.611 of the Civil Practice Law, any allegation made by the agency without reasonable cause and found to be untrue shall subject the agency making such allegation to the payment of the reasonable expenses, including reasonable attorney's fees, actually incurred in defending against that allegation by the party against whom the case was initiated.

The claimant shall make his demand for such expenses to the agency. If the claimant is dissatisfied because of the agency's failure to make any award or because of the insufficiency of the agency's award, the claimant may petition the Court of Claims for the amount

deemed owed. If allowed any recovery by the Court of Claims, the claimant shall also be entitled to reasonable attorney's fees and the reasonable expenses incurred in making his claim for the expenses incurred in the administrative action.

(b) In any case in which a party has any administrative rule invalidated by a court for any reason, including but not limited to the agency's exceeding its statutory authority or the agency's failure to follow statutory procedures in the adoption of the rule, the court shall award the party bringing the action the reasonable expenses of the litigation, including reasonable attorney's fees. (Added by PA 82-670, effective January 1, 1982; Amended by PA 82-1057, effective February 11, 1983)

Section 15. EX PARTE CONSULTATIONS) Except in the disposition of matters which they are authorized by law to entertain or dispose of on an ex parte basis, neither agency members, employees nor hearing examiners shall, after notice of hearing in a contested case or licensing to which the procedures of a contested case apply under this Act, communicate, directly or indirectly, in connection with any issue of fact, with any person or party, or in connection with any other issue with any party or his representative, except upon notice and opportunity for all parties to participate. However, an agency member may communicate with other members of the agency, and an agency member or hearing examiner may have the aid and advice of one or more personal assistants. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

Section 16. LICENSES) (a) When any licensing is required by law to be preceded by notice and opportunity for hearing, the provisions of this Act concerning contested cases shall apply.

(b) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license shall continue in full force and effect until the final agency decision on the application has been made unless a later date is fixed by order of a reviewing court.

(c) No agency shall revoke, suspend, annul, withdraw, amend materially, or refuse to renew any valid license without first giving written notice to the licensee of the facts or conduct upon which the agency will rely to support its proposed action, and an opportunity for hearing in accordance with the provisions of this Act concerning contested cases. At any such hearing, the licensee shall have the right to show compliance with all lawful requirements for the retention, or continuation or renewal of the license. If, however, the agency finds that the public interest, safety or welfare imperatively requires emergency action, and if the agency incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action which proceedings shall be promptly instituted and determined.

Any application for renewal of a license which contains required and relevant information, data, material or circumstances which were not contained in an application for the existing license, shall be subject

to the provisions of Section 16(a) of this Act. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

Section 17. RATE-MAKING) Every agency which is empowered by law to engage in rate-making activities shall establish by rule, not inconsistent with the provisions of law establishing such rate-making jurisdiction, the practice and procedure to be followed in rate-making activities before such agency. (PA 79-1083)

Section 18. WAIVER) Compliance with any or all of the provisions of this Act concerning contested cases may be waived by written stipulation of all parties. (PA 79-1083)

Section 19. (PA 79-1083; Repealed as of January 1, 1978, by PA 80-1035, effective September 27, 1977)

Section 20. SEVERABILITY) If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are severable. (PA 79-1083)

Section 21. EFFECTIVE DATE) This Act takes effect upon its becoming a law. (PA 79-1083, effective September 22, 1975)

APPENDIX C
REVISED OPERATIONAL RULES

TITLE 1: RULES AND RULEMAKING
CHAPTER II: JOINT COMMITTEE ON ADMINISTRATIVE RULES

PART 210
GENERAL POLICIES

Section	
210.100	Definitions
210.150	Effect of Publication in the Illinois Register
210.200	Joint Committee Function
210.300	Consultation with Agencies
210.400	Coordination with the Administrative Code Division
210.450	Publication of Notice and Hearing Dates
210.500	Use of Subpoenas

AUTHORITY: Implementing Sections 5.01 - 5.03 and 7.02 - 7.10 and authorized by Section 7.09 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1985, ch. 127, pars. 1005.01 - 1005.03, 1007.02 - 1007.10 and 1007.09).

SOURCE: Adopted at 3 Ill. Reg. 8, p. 18, effective April 1, 1979; amended at 3 Ill. Reg. 49, p. 230, effective December 10, 1979; rules repealed, new rules adopted and codified at 4 Ill. Reg. 49, p. 166, effective December 1, 1980; amended at 6 Ill. Reg. 9314, effective August 1, 1982; amended at 10 Ill. Reg. 21709, effective May 1, 1987.

NOTE: Capitalization denotes statutory language.

Section 210.100 Definitions

"Act" means the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1985, ch. 127, par 1001 et seq., as amended).

"Administrative Code Division" or "Code Division" means the unit of the Office of the Secretary of State which publishes the Illinois Administrative Code and the Illinois Register and with which rules are filed.

"Agency" means each type of entity enumerated in Section 3.01 of the Act which is authorized by law to make rules or to determine contested cases.

"Co-Chairmen" means the members of the Joint Committee elected to those positions pursuant to Section 1-5(c) of the Legislative Commission Reorganization Act of 1984 (Ill. Rev. Stat. 1985, ch. 63, par. 1001-5(c)).

"Director" means the Executive Director of the Joint Committee.

"Illinois Administrative Code" means THE COMPLETE TEXT OF ALL RULES OF ALL STATE AGENCIES FILED WITH THE Administrative Code Division and published by the Administrative Code Division as required by Section 7 of the Act.

"Illinois Register" means the weekly publication of the Administrative Code Division authorized by Section 6.01 of the Act.

"Joint Committee" means the Joint Committee on Administrative Rules, created by Section 7.02(a) of the Act.

"Nonsubstantive" means procedural or non-procedural matters which do not have an impact upon the meaning, effect, or interpretation of a rule or rulemaking.

"Rule" means EACH AGENCY STATEMENT OF GENERAL APPLICABILITY THAT IMPLEMENTS, APPLIES, INTERPRETS, OR PRESCRIBES LAW OR POLICY, BUT DOES NOT INCLUDE STATEMENTS CONCERNING ONLY THE INTERNAL MANAGEMENT OF AN AGENCY AND NOT AFFECTING PRIVATE RIGHTS OR PROCEDURES AVAILABLE TO PERSONS OR ENTITIES OUTSIDE THE AGENCY, INFORMAL ADVISORY RULINGS ISSUED PURSUANT TO SECTION 9 OF THE ACT, INTRA-AGENCY MEMORANDA OR THE PRESCRIPTION OF STANDARDIZED FORMS, which affects the private rights or procedures available to persons or entities outside the agency pursuant to Section 3.09 of the Act.

"Rulemaking" means the process by which agencies propose, adopt, amend or repeal rules pursuant to Section 5 of the Act.

"Substantive" means non-procedural matters which have an impact upon the meaning, effect, or interpretation of a rule or rulemaking.

(Source: Amended at 10 Ill. Reg. 21709, effective May 1, 1987)

Section 210.150 Effect of Publication in the Illinois Register

Every rule or rulemaking published in the Illinois Register is subject to review by the Joint Committee regardless of any assertion by the agency to the contrary.

(Source: Added at 10 Ill. Reg. 21709, effective May 1, 1987)

Section 210.200 Joint Committee Function

The Joint Committee will fulfill its function of PROMOTING ADEQUATE AND PROPER RULES BY AGENCIES AND UNDERSTANDING ON THE PART OF THE PUBLIC RESPECTING SUCH RULES and its responsibility to review rules and rulemaking. (Ill. Rev. Stat. 1985, ch. 127, par. 1007.04) It will cooperate with agencies and conduct hearings to promote full and open discussion of rules and rulemaking.

(Source: Amended at 10 Ill. Reg. 21709, effective May 1, 1987)

Section 210.300 Consultation with Agencies

Some agencies may have some problems implementing or complying with the rulemaking procedures of the Act. The Joint Committee and its staff will discuss these types of problems with agencies. Such consultation will be used to advise agencies about form, statutory authority, or other matters which are considered by the Joint Committee in its review of rules and rulemaking. The Joint Committee and its staff will not issue advisory opinions.

(Source: Amended at 10 Ill. Reg. 21709, effective May 1, 1987)

Section 210.400 Coordination with the Administrative Code Division

- a) The Administrative Code Division has the responsibility under the Act to keep on file rules promulgated by agencies and to publish the Illinois Register and the Illinois Administrative Code. The Joint Committee's procedures are coordinated with the Secretary of State's rules entitled "Rulemaking" (1 Ill. Adm. Code 100).
- b) Pursuant to Section 7.01(a) of the Act, WHENEVER A RULE, OR MODIFICATION OR REPEAL OF ANY RULE IS FILED WITH THE SECRETARY OF STATE, THE SECRETARY OF STATE SHALL SEND A CERTIFIED COPY OF SUCH ADOPTED, EMERGENCY, OR PEREMPTORY RULE, MODIFICATION OR REPEAL TO THE JOINT COMMITTEE WITHIN THREE WORKING DAYS AFTER SUCH FILING.
- c) The Administrative Code Division is authorized, pursuant to Section 7(d) of the Act, TO MAKE CHANGES IN THE NUMBERING AND LOCATION OF RULES IN THE CODIFICATION SCHEME, TO RECOMMEND CHANGES IN THE SECTIONING AND HEADINGS OF RULES, AND TO MAKE SUGGESTIONS CONCERNING THE CORRECTION OF GRAMMATICAL AND TECHNICAL ERRORS. During the first notice period, the Administrative Code Division shall notify the agency and the Joint Committee of the changes, suggestions and recommendations made. An agency cannot make any substantive changes in response to comments of the Administrative Code Division if those comments are received after the commencement of the second notice period. The Administrative Code Division's authority with respect to such suggestions, recommendations, and changes is limited to non-substantive matters.
- d) Section 7(a) of the Act provides that THE ADMINISTRATIVE CODE DIVISION SHALL NOT ADOPT ANY CODIFICATION SYSTEM OR SCHEDULE WITHOUT THE APPROVAL OF THE JOINT COMMITTEE. APPROVAL SHALL BE CONDITIONED SOLELY UPON ESTABLISHING THAT THE PROPOSAL IS COMPATIBLE WITH EXISTING ELECTRONIC DATA PROCESSING EQUIPMENT AND PROGRAMS MAINTAINED BY AND FOR THE GENERAL ASSEMBLY. Prior to the

adoption, amendment, or repeal of rules relating to the codification system, the Administrative Code Division and the Legislative Information System must certify that the system or schedule meets the requirements of this subsection.

(Source: Amended at 10 Ill. Reg. 21709, effective May 1, 1987)

Section 210.450 Publication of Notice and Hearing Dates

Each week the Joint Committee shall SUBMIT FOR PUBLICATION IN THE ILLINOIS REGISTER A LIST OF THE SECOND NOTICES RECEIVED DURING THE PRECEDING WEEK. THE LIST WILL INCLUDE THE DATE ON WHICH THE NOTICE WAS RECEIVED AND THE DATE OF THE HEARING AT WHICH THE JOINT COMMITTEE INTENDS TO CONSIDER THE PROPOSED RULEMAKING. (Ill. Rev. Stat. 1985, ch. 127, par. 1007.02) The list is intended only to inform the public and shall not preclude the Joint Committee from considering or acting on the rule or rulemaking at a different hearing. The Joint Committee shall attempt to notify an agency of any change in the date of its intended consideration of the agency's rules or rulemaking.

(Source: Amended at 10 Ill. Reg. 21709, effective May 1, 1987)

Section 210.500 Use of Subpoenas

- a) The Joint Committee may issue a subpoena pursuant to Section 7.03(b) of the Act. The Joint Committee will issue a subpoena for reasons such as the following:
 - 1) the agency refuses to appear before a Joint Committee hearing;
 - 2) the agency refuses to provide information requested by the Joint Committee; or
 - 3) the agency refuses to produce any records or documents requested by the Joint Committee.
- b) Prior to the issuance of a subpoena, the Joint Committee or the Director will:
 - 1) notify the agency (in writing if sufficient time exists) of the refusal and the fact that the Co-Chairmen or the Director intend to issue a subpoena and
 - 2) allow the agency to present its reasons for the refusal.
- c) The Co-Chairmen may issue a subpoena. In addition, the Director may issue a subpoena when approved by a majority vote of the members of the Joint Committee.

(Source: Amended at 10 Ill. Reg. 21709, effective May 1, 1987)

TITLE 1: RULES AND RULEMAKING
CHAPTER II: JOINT COMMITTEE ON ADMINISTRATIVE RULES

PART 220
REVIEW OF PROPOSED RULEMAKING

Section

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- 220.2 Preliminary Review (Renumbered)
- 220.3 Request for Economic Analysis (Renumbered)
- 220.4 Format of Economic Analysis (Renumbered)
- 220.5 Second Notice: Required Information (Renumbered)
- 220.6 Second Notice: Additional Information (Renumbered)
- 220.7 Staff Review (Renumbered)
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- 220.300 Economic and Budgetary Effects Analysis
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- 220.1300 Analysis of Agency Response
- 220.1350 Certification of Filing Prohibition; Statement of Specific Objections (Repealed)
- 220.1400 Review of Response to Objection (Repealed)
- 220.1500 Failure to Respond (Repealed)
- 220.1600 Limit of Substantive Changes (Repealed)
- 220.1700 Recommend Legislation (Repealed)
- Exhibit A State Mandates Act Questionnaire
- Exhibit B Agency Analysis of Economic and Budgetary Effects of Proposed Rulemaking
- Exhibit C Department of Commerce and Community Affairs' Impact Analysis
- Exhibit D Certification of Approval of Incorporation by Reference
- Exhibit E Certification of Objection to Proposed Rulemaking
- Exhibit F Certification of Filing Prohibition of Proposed Rulemaking
- Exhibit G Certification of Withdrawal of Filing Prohibition of Proposed Rulemaking
- Exhibit H Certification of No Objection to Proposed Rulemaking
- Exhibit I Agency Response to Joint Committee Objection to Proposed Rulemaking
- Exhibit J Response to Joint Committee Recommendation to Proposed Rulemaking

AUTHORITY: Implementing Sections 4.03, 5.01, 7.06 and 7.06a and authorized by Section 7.09 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1985, ch. 127, pars. 1004.03, 1005.01, 1007.06, 1007.06a, 1007.09).

SOURCE: Adopted at 3 Ill. Reg. 8, p. 18, effective April 1, 1979; amended at 3 Ill. Reg. 49, p. 230, effective December 10, 1979; rules repealed, new rules adopted and codified at 4 Ill. Reg. 49, p. 166, effective December 1, 1980; amended at 5 Ill. Reg. 5164, effective May 15, 1981; amended at 6 Ill. Reg. 9314, effective August 1, 1982; amended at 9 Ill. Reg. 20699, effective January 1, 1986; amended at 10 Ill. Reg. 21769, effective May 1, 1987.

NOTE: Capitalization denotes statutory language.

Section 220.1 Definitions (Renumbered)

(Source: Section 220.1 renumbered to Section 220.100 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.2 Preliminary Review (Renumbered)

(Source: Section 220.2 renumbered to Section 220.200 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.3 Request for Economic Analysis (Renumbered)

(Source: Section 220.3 renumbered to Section 220.300 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.4 Format of Economic Analysis (Renumbered)

(Source: Section 220.4 renumbered to Section 220.400 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.5 Second Notice: Required Information (Renumbered)

(Source: Section 220.5 renumbered to Section 220.500 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.6 Second Notice: Additional Information (Renumbered)

(Source: Section 220.6 renumbered to Section 220.600 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.7 Staff Review (Renumbered)

(Source: Section 220.7 renumbered to Section 220.700 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.8 Committee Hearing (Renumbered)

(Source: Section 220.8 renumbered to Section 220.800 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.9 Criteria for Review

(Source: Section 220.9 renumbered to Section 220.900 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.10 Objection; Notice of No Objection (Renumbered)

(Source: Section 220.10 renumbered to Section 220.1000 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.11 Certification of Objection; Statement of Specific Objections (Renumbered)

(Source: Section 220.11 renumbered to Section 220.1100 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.12 Response to Objection: Deadline, Format (Renumbered)

(Source: Section 220.12 renumbered to Section 220.1200 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.13 Response to Objection: Manner (Renumbered)

(Source: Section 220.13 renumbered to Section 220.1300 at 5 Ill. Reg. 5146, effective May 15, 1981)

Section 220.14 Review of Response to Objection (Renumbered)

(Source: Section 220.14 renumbered to Section 220.1400 at 5 Ill. Reg. 5146, effective May 15, 1981)

Section 220.15 Failure to Respond (Renumbered)

(Source: Section 220.15 renumbered to Section 220.1500 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.16 Limit of Substantive Changes (Renumbered)

(Source: Section 220.16 renumbered to Section 220.1600 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.17 Recommend Legislation (Renumbered)

(Source: Section 220.17 renumbered to Section 220.1700 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.100 Definitions

- a) The terms and definitions found in 1 Ill. Adm. Code 210.100 are incorporated into this Part.
- b) As used in this Part:
 - 1) "Final Regulatory Flexibility Analysis" means the statement prepared by the agency pursuant to Section 5.01(b) of the Illinois Administrative Procedure Act (Act) (Ill. Rev. Stat. 1985, ch. 127, par. 1005.01(b)) as part of the second notice which includes A SUMMARY OF ISSUES RAISED BY SMALL BUSINESSES DURING THE FIRST NOTICE PERIOD AND A DESCRIPTION OF ACTIONS TAKEN ON ANY ALTERNATIVES TO THE PROPOSED RULEMAKING SUGGESTED BY SMALL

BUSINESSES DURING THE FIRST NOTICE PERIOD, INCLUDING REASONS FOR REJECTING ANY ALTERNATIVES NOT UTILIZED.

- 2) "First Notice" means the notice of proposed rulemaking published in the Illinois Register pursuant to Section 5.01(a) of the Act.
- 3) "First Notice Period" means the period of time allowed for public notice and comment pursuant to Section 5.01(a) of the Act. The period COMMENCES ON THE DATE THE FIRST NOTICE IS PUBLISHED IN THE ILLINOIS REGISTER AND MUST BE AT LEAST 45 DAYS IN LENGTH. The original first notice period shall be terminated if an agency submits to the Administrative Code Division for publication in the Illinois Register a Notice of Corrections to Proposed Rulemaking. The new first notice period shall begin on the date the Notice is published in the Illinois Register.
- 4) "Initial Regulatory Flexibility Analysis" means the statement prepared by the agency pursuant to Section 5.01(a) of the Act as part of the first notice which includes a brief DESCRIPTION OF THE TYPES OF SMALL BUSINESSES SUBJECT TO THE PROPOSED RULEMAKING, A DESCRIPTION OF THE PROPOSED REPORTING, BOOKKEEPING, AND OTHER PROCEDURES REQUIRED FOR COMPLIANCE WITH THE PROPOSED RULEMAKING; A DESCRIPTION OF THE TYPES OF PROFESSIONAL SKILLS NECESSARY FOR COMPLIANCE; AND THE TIME, PLACE, AND MANNER IN WHICH INTERESTED PERSONS MAY PRESENT THEIR VIEWS AND COMMENTS CONCERNING THE PROPOSED RULEMAKING.
- 5) "Second Notice" means written notification to the Joint Committee on Administrative Rules (Joint Committee) that the agency wishes the Committee to begin its review process pursuant to Section 5.01(b) of the Act. Receipt by the Joint Committee of a complete second notice (see Section 220.600) will commence the Committee's review. Incomplete second notices will be returned to the agency. Each week, the Joint Committee will submit a list of second notices which are received and complete to the Administrative Code Division for publication in the Illinois Register.
- 6) "Second Notice Period" means the period of time provided for Joint Committee review of the proposed rulemaking pursuant to Section 5.01(b) of the Act. THE SECOND NOTICE PERIOD SHALL EXPIRE 45 DAYS FROM THE DATE OF RECEIPT OF A COMPLETE SECOND NOTICE (See Section 220.600) BY THE JOINT COMMITTEE UNLESS PRIOR TO THAT TIME THE AGENCY IS IN RECEIPT OF A CERTIFICATION AND STATEMENT OF OBJECTION OR A CERTIFICATION OF NO OBJECTION FROM THE COMMITTEE OR UNLESS THE AGENCY AND THE JOINT COMMITTEE HAVE AGREED TO EXTEND THE SECOND NOTICE PERIOD.
- 7) "SMALL BUSINESS" MEANS A CONCERN, INCLUDING ITS AFFILIATES, WHICH IS INDEPENDENTLY OWNED AND OPERATED, NOT DOMINANT IN ITS FIELD, AND WHICH EMPLOYS FEWER THAN 50 FULL-TIME EMPLOYEES OR WHICH

HAS GROSS ANNUAL SALES OF LESS THAN \$4 MILLION. AN AGENCY MAY DEFINE SMALL BUSINESS TO INCLUDE MORE PERSONS IF IT FINDS THAT SUCH A DEFINITION IS NECESSARY TO ADAPT A RULE TO THE NEEDS AND PROBLEMS OF SMALL BUSINESSES AND ORGANIZATIONS. (Ill. Rev. Stat. 1985, ch. 127, par. 1003.10)

(Source: Amended at 10 Ill. Reg. 21769, effective May 1, 1987)

Section 220.150 Effect of Publication in the Illinois Register

Every proposed rulemaking, modification or repeal which is published in the Illinois Register shall be subject to review by the Joint Committee pursuant to Section 5.01 of the Act regardless of any assertion by the agency to the contrary.

(Source: Added at 10 Ill. Reg. 21769, effective May 1, 1987)

Section 220.200 Preliminary Review

- a) During the first 5 days after the publication of the first notice in the Illinois Register, the agency may submit to the Joint Committee a written request for a preliminary review of the proposed rulemaking.
- b) The written request for a preliminary review shall substantiate the reasons why the agency believes such a review is necessary including the reasons why the review pursuant to Section 5.01(b) of the Act and Section 220.700 of this Part is not sufficient.
- c) In determining whether to grant a preliminary review, the Executive Director of the Joint Committee (Director) will consider whether the Joint Committee's workload permits such a review and whether the review is necessary.
 - 1) Circumstances under which the Director may consider a preliminary review to be necessary include the following: agency internal rulemaking procedures which necessitate the review, including the use of an advisory committee which must review and approve the proposed rulemaking; an agency or its representative which is totally unfamiliar with the rulemaking process; or rules which are completely new or an extensive revision to existing rules;
 - 2) During the first notice period, the Director shall notify the agency in writing of the grant or denial of a preliminary review.
- d) The preliminary review will consist of both the notice and text of the proposed rulemaking. The criteria found in Sections 220.900 and 220.950 of this Part will be applied to the preliminary review.

- e) The preliminary review is in addition to the review pursuant to Section 5.01(b) of the Act and Section 220.700 of this Part. An agency shall not rely upon the issues raised during the course of the preliminary review to preclude objections on those issues or upon other bases during the review pursuant to Section 5.01(b) of the Act and Section 220.700 of this Part.

(Source: Amended at 10 Ill. Reg. 21769, effective May 1, 1987)

Section 220.250 Joint Committee Request for Agency Hearing

- a) Within the first 14 days after the publication of the first notice in the Illinois Register, the Co-Chairmen or the Director may request the agency proposing the rulemaking to hold a public hearing pursuant to Section 5.01(a) of the Act. This request will be made in writing by the Co-Chairmen or Director.
- b) Circumstances under which the Co-Chairmen or Director may make such a request include the following:
 - 1) the hearing will facilitate the submission of public comment by making it easier for certain members of the public to submit views and comments regarding the rulemaking that might not otherwise be submitted;
 - 2) the Joint Committee has received public comment concerning the rulemaking which indicates the need for such a hearing; or
 - 3) the rulemaking concerns an area of regulation of such importance as to warrant a hearing.

(Source: Amended at 10 Ill. Reg. 21769, effective May 1, 1987)

Section 220.275 State Mandates Act Requirements

- a) RULEMAKING WHICH CREATES OR EXPANDS A STATE MANDATE ON UNITS OF LOCAL GOVERNMENT, SCHOOL DISTRICTS, OR COMMUNITY COLLEGE DISTRICTS IS SUBJECT TO THE STATE MANDATES ACT (Ill. Rev. Stat. 1985, ch. 85, par. 2201 et seq.) and a Statement of Statewide Policy Objectives shall be prepared by the agency and published at the same time the first notice is published. (Ill. Rev. Stat. 1985, ch. 127, par. 1004(d))
- b) If it appears that a proposed rule or rulemaking creates or expands a state mandate on units of local government, school districts or community college districts, the Joint Committee shall, within the first 30 days after the publication of the first notice, take the following actions:
 - 1) Request that the agency proposing the rule complete the form shown in Exhibit A of this Part. This form shall be submitted to the Joint Committee as part of the agency's second notice; and

- 2) Request that the Department of Commerce and Community Affairs complete and submit to the Joint Committee and the agency an analysis of the following, pursuant to Section 4(b) of the State Mandates Act, prior to the agency's submission of second notice:
 - A) the type of local government and local government agency or official to whom the mandate is directed;
 - B) whether an identifiable local direct cost is necessitated by the mandate and the estimated annual amount;
 - C) the extent of State financial participation in meeting such identifiable costs; and
 - D) whether the rule or rulemaking creates a new mandate or expands an existing mandate.

(Source: Added at 10 Ill. Reg. 21769, effective May 1, 1987)

Section 220.285 Small Business Flexibility Requirements

- a) WHEN AN AGENCY PROPOSES A NEW RULE, OR AN AMENDMENT TO AN EXISTING RULE WHICH MAY HAVE AN IMPACT ON SMALL BUSINESSES, THE AGENCY SHALL CONSIDER EACH OF THE FOLLOWING PURSUANT TO SECTION 4.03(a) OF THE ACT:
 - 1) ESTABLISHING LESS STRINGENT COMPLIANCE OR REPORTING REQUIREMENTS IN THE RULE FOR SMALL BUSINESSES.
 - 2) ESTABLISHING LESS STRINGENT SCHEDULES OR DEADLINES IN THE RULE FOR COMPLIANCE OR REPORTING REQUIREMENTS OF SMALL BUSINESSES.
 - 3) CONSOLIDATING OR SIMPLIFYING THE RULE'S COMPLIANCE OR REPORTING REQUIREMENTS FOR SMALL BUSINESSES.
 - 4) ESTABLISHING PERFORMANCE STANDARDS TO REPLACE DESIGN OR OPERATIONAL STANDARDS IN THE RULE FOR SMALL BUSINESSES.
 - 5) EXEMPTING SMALL BUSINESSES FROM ANY OR ALL REQUIREMENTS OF THE RULE.
- b) The agency shall also provide pursuant to Section 4.03(b) of the Act, during the first notice period, an opportunity for small businesses to participate in the rulemaking process by utilizing one or more of the following techniques:
 - 1) INCLUSION IN ANY ADVANCE NOTICE OF POSSIBLE RULEMAKING A STATEMENT THAT THE RULE MAY HAVE AN IMPACT ON SMALL BUSINESSES.
 - 2) PUBLICATION OF A NOTICE OF RULEMAKING IN PUBLICATIONS LIKELY TO BE OBTAINED BY SMALL BUSINESSES.
 - 3) DIRECT NOTIFICATION OF INTERESTED SMALL BUSINESSES.
 - 4) PUBLIC HEARINGS CONCERNING THE IMPACT OF THE RULE ON SMALL BUSINESSES.

- 5) SPECIAL HEARING OR COMMENT PROCEDURES TO REDUCE THE COST OR COMPLEXITY OF PARTICIPATION IN THE RULEMAKING BY SMALL BUSINESSES.

(Source: Added at 10 Ill. Reg. 21769, effective May 1, 1987)

Section 220.300 Economic and Budgetary Effects Analysis

- a) Within the first 30 days after the publication of the first notice, the Joint Committee shall request from the agency AN ANALYSIS OF THE ECONOMIC AND BUDGETARY EFFECTS ON THE PROPOSED RULEMAKING pursuant to Section 5.01(b) of the Act if the economic and budgetary impact of the proposed rule is clear on its face, or if it is alleged to have an impact in information received by the Joint Committee from the Bureau of the Budget, the Department of Commerce and Community Affairs, the Auditor General, another State agency, or an organization, association or individual. This request will be made in writing by the Director. The Joint Committee will consider the information in the first notice and any other available information in deciding whether to make the request.
- b) The analysis shall be in the form shown in Exhibit B of this Part and shall be submitted to the Joint Committee in writing as part of the agency's second notice. The analysis shall include:
 - 1) A summary of any direct economic effect on the persons who will be regulated by the rule including a discussion of whether the regulation is the least costly alternative upon those persons regulated;
 - 2) A description of the anticipated cost of the regulation as reflected in the agency's budget;
 - 3) A description of or a listing of the anticipated cost of the regulation to other State agencies as reflected in their budgets; and
 - 4) The anticipated cost of the total program of regulation on State revenue.

(Source: Amended at 10 Ill. Reg. 21769, effective May 1, 1987)

Section 220.400 Format of Economic Analysis (Repealed)

(Source: Repealed at 10 Ill. Reg. 21769, effective May 1, 1987)

Section 220.450 Impact Analysis

- a) Within the first 45 days after the publication of the first notice in the Illinois Register, THE DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS (DCCA) SHALL PREPARE and submit to the Joint Committee, pursuant to Section 4.03(c)(1-4) of the Act, an IMPACT ANALYSIS OF THE PROPOSED RULE DESCRIBING ITS

EFFECT ON SMALL BUSINESSES, whenever the agency notifies the Department that the rules affect businesses. The second notice period cannot be commenced and the second notice will not be accepted by the Joint Committee until such analysis is submitted by the Department of Commerce and Community Affairs to the Joint Committee.

- b) Effective October 1, 1987, the impact analysis prepared by DCCA shall be in the form shown in Exhibit C of this Part and shall contain a discussion of the following factors:
 - 1) PROJECTED REPORTING, RECORDKEEPING AND COMPLIANCE REQUIREMENTS OF THE PROPOSED RULE;
 - 2) TYPES OF, AND ESTIMATED NUMBER OF SMALL BUSINESSES WHICH WILL BE AFFECTED BY THE PROPOSED RULE;
 - 3) AN ESTIMATE OF THE ECONOMIC IMPACT WHICH THE REGULATION WILL HAVE UPON SMALL BUSINESSES; AND
 - 4) ALTERNATIVES TO THE PROPOSED RULE WHICH WOULD MINIMIZE THE ECONOMIC IMPACT OF THE RULE UPON SMALL BUSINESSES.

(Source: Added at 10 Ill. Reg. 21769, effective May 1, 1987)

Section 220.500 Second Notice Procedures

- a) The second notice shall be clearly identified as such, and shall be submitted to the Director at the following address:

Joint Committee on Administrative Rules
509 South Sixth Street, Room 500
Springfield, Illinois 62701
- b) THE SECOND NOTICE PERIOD WILL COMMENCE ON THE DAY THE SECOND NOTICE IS RECEIVED as complete BY THE JOINT COMMITTEE pursuant to Section 5.01(b) of the Act. The second notice will be accepted by the Joint Committee when the requirements of Section 220.600 of this Part have been met. AFTER ACCEPTANCE BY THE JOINT COMMITTEE OF A SECOND NOTICE, THE COMMITTEE WILL NOTIFY THE ADMINISTRATIVE CODE DIVISION AND THE ISSUING AGENCY OF THE DATE ON WHICH THE SECOND NOTICE PERIOD COMMENCED. THE SECOND NOTICE PERIOD WILL EXPIRE 45 DAYS AFTER ACCEPTANCE BY THE JOINT COMMITTEE OF THE SECOND NOTICE, or at a time mutually agreed upon by the Joint Committee and the agency, UNLESS PRIOR TO THAT TIME THE AGENCY HAS RECEIVED:
 - 1) A CERTIFICATION AND STATEMENT OF OBJECTION FROM THE JOINT COMMITTEE; or
 - 2) A CERTIFICATION OF NO OBJECTION FROM THE JOINT COMMITTEE.
- c) The Joint Committee will notify the Administrative Code Division and the agency, in writing, of the date on which the second notice

period started. Notices which do not contain all of the information required by Section 220.600 of this Part and Section 5.01(b) of the Act will not be accepted by the Joint Committee. An agency which submits such a notice will be informed in writing of the specific reasons the notice was not accepted.

- d) Second notices which are received by the Joint Committee cannot be withdrawn.
- e) The agency shall have the option of splitting the first notice into more than one second notices when the first notice contains changes that are being made to several Sections. When submitting the first notice to the Administrative Code Division for publication in the Illinois Register, the agency shall separately provide, for each Section being amended, the following information:
 - 1) specific Code citation;
 - 2) specific statutory authority; and
 - 3) a complete description of the subjects and issues involved.
- f) AFTER COMMENCEMENT OF THE SECOND NOTICE PERIOD, NO SUBSTANTIVE CHANGE MAY BE MADE TO A PROPOSED RULEMAKING UNLESS IT IS MADE IN RESPONSE TO AN OBJECTION OR SUGGESTION OF THE JOINT COMMITTEE. (Ill. Rev. Stat. 1985, ch. 127, par. 1005.01(b)) A suggestion or comment made by a member of the Joint Committee does not authorize a substantive change unless such suggestion or comment is ratified by the Joint Committee through the issuance of a Certification and Statement of Objection or Recommendation to the proposed rulemaking.

(Source: Amended at 10 Ill. Reg. 21769, effective May 1, 1987)

Section 220.600 Required Contents of Second Notice

- a) A second notice which contains the following information will be accepted by the Joint Committee:
 - 1) The name of the agency.
 - 2) The Title and Illinois Administrative Code citation of the proposed rulemaking.
 - 3) The date, issue, and page number of the Illinois Register in which the first notice was published.
 - 4) The full text and specific location of any changes made in the rule during the first notice period, which shall be readily identifiable as changes made during the first notice period. The changes may be set forth by the agency by one of the following methods:
 - A) The original text of the proposed rulemaking showing the specific additions and deletions which were made during the first notice period; or

- B) A complete listing of all of the Sections of the rulemaking which were changed, showing the exact changes which were made during the first notice period; or
 - C) If the only changes which were made in the rulemaking were those requested by the Administrative Code Division, a copy of the memorandum issued by the Administrative Code Division to the agency, and a statement that those changes, and only those changes will be made in the adopted rule.
- 5) A response to any recommendations made by the Administrative Code Division for changes in the rules to make them comply with the codification scheme pursuant to Section 7(c) of the Act, and the specific reasons for agency rejection of any recommendations.
- 6) A statement that the rulemaking does or does not include an incorporation by reference pursuant to Section 6.02(b) of the Illinois Administrative Procedure Act, and if the rulemaking does include such an incorporation, the date of Joint Committee approval or a statement specifying that the incorporation will be deleted or that the rule will include the incorporated material.
- 7) A FINAL REGULATORY FLEXIBILITY ANALYSIS, WHICH SHALL INCLUDE THE FOLLOWING:
 - A) A SUMMARY OF THE ISSUES RAISED BY SMALL BUSINESSES DURING THE FIRST NOTICE PERIOD; and
 - B) A DESCRIPTION OF ACTIONS TAKEN ON ANY ALTERNATIVES TO THE PROPOSED RULEMAKING SUGGESTED BY SMALL BUSINESSES DURING THE FIRST NOTICE PERIOD, INCLUDING REASONS FOR REJECTING ANY ALTERNATIVES NOT UTILIZED. (III. Rev. Stat. 1985, ch. 127, par. 1005.01(b))
- 8) A statement of the methods used by the agency to comply with Section 4.03 of the Act and Section 220.285 of this Part.
- 9) AN EVALUATION OF ALL COMMENTS RECEIVED BY THE AGENCY CONCERNING THE PROPOSED RULEMAKING DURING THE FIRST NOTICE PERIOD pursuant to Section 7.04(5)(b) of the Act. This evaluation shall not include an evaluation of the questions raised by the Joint Committee during a preliminary review granted pursuant to Section 220.200 of this Part. The failure of an agency to evaluate, pursuant to this Section, the comments received will be deemed to be an incomplete second notice. The evaluation must include the following information:
 - A) A list of all persons or organizations making comments on the proposed rulemaking.
 - B) A list of specific criticisms, suggestions, and comments raised by interested persons, and the agency's analysis of each of these criticisms, suggestions, and comments.
 - C) Any changes made to the rules by the agency as a result of criticisms, suggestions, and comments made by interested persons.

- D) The names of all the persons or organizations requesting a public hearing and the date of any public hearings held on the proposed rulemaking.
- 10) The JUSTIFICATION AND RATIONALE FOR THE RULEMAKING required by Section 7.04(5)(d) of the Act. The justification and rationale shall include the following:
 - A) Citations to changes in Illinois laws which require the rulemaking.
 - B) Explanation of changes in agency policies and procedures which required the rulemaking.
 - C) Citations to federal laws, rules or regulations, or funding requirements which required the rulemaking.
 - D) Citations and copies of court orders or decisions which required the rulemaking.
 - E) A complete explanation of any other reasons for the proposed rulemaking.
 - 11) The name of the agency's representative who will respond to the Joint Committee questions regarding the proposed rulemaking.
 - 12) If requested by the Joint Committee pursuant to Section 220.275 of this Part, completion of the State Mandates Act Questionnaire (Exhibit A).
 - 13) If requested by the Joint Committee as provided in Section 220.300 of this Part and Section 7.04(5) of the Act, A completed ANALYSIS OF THE ECONOMIC AND BUDGETARY EFFECTS OF THE PROPOSED RULEMAKING. (Ill. Rev. Stat. 1985, ch. 127, par. 1005.01(b)) The Analysis shall be in the form shown in Exhibit B of this Part. If the agency is unable to provide any information required for the analysis, the specific reasons and justification for not completing the analysis shall be included.
 - 14) If requested by the agency pursuant to Section 220.450(a) of this Part, the date the Impact Statement (Exhibit C) was requested to be submitted to the Joint Committee by the Department of Commerce and Community Affairs.
- b) A second notice which does not include the information required by this Section will not be accepted and will be returned to the agency within 2 working days with an explanation of the reason for the return.

(Source: Amended at 10 Ill. Reg. 21769, effective May 1, 1987)

Section 220.700 Staff Review

- a) Subsequent to the acceptance of a second notice pursuant to Section 220.500 and 220.600 of this Part, the Joint Committee staff will review the proposed rulemaking, including the notice and the text, pursuant to the criteria in Section 220.900 and Section 220.950 of this Part. If requested by the Joint Committee in order to do a

thorough review of the rules, the agency shall be required to submit any forms, or amendments to forms, or manuals or amendments to manuals, used by the agency to implement the rules.

- b) The staff may raise questions or problems as a result of its review and will discuss these questions or problems with the agency.
- c) The staff will report the results of its review to the Joint Committee, and may develop recommendations for consideration by the Joint Committee. The staff may recommend that the Joint Committee issue an objection, prohibit filing of the rulemaking, develop legislation, take some other action, or take no action. Staff recommendations are advisory only and shall not limit the Joint Committee's power to take some other action. The staff will attempt to inform the agency of the substance of the recommendations prior to the Joint Committee's consideration of the proposed rulemaking at a public hearing.

(Source: Amended at 10 Ill. Reg. 21769, effective May 1, 1987)

Section 220.760 Incorporation by Reference Pursuant to Section 6.02(a) of the Act

- a) An agency may incorporate by reference the RULES AND REGULATIONS OF AN AGENCY OF THE UNITED STATES AND RULES, REGULATIONS, STANDARDS OR GUIDELINES OF A NATIONALLY RECOGNIZED ORGANIZATION OR ASSOCIATION without publishing the incorporated material in full, provided the material IS MADE READILY AVAILABLE FOR PUBLIC INSPECTION BY THE AGENCY, ORGANIZATION OR ASSOCIATION ORIGINALLY ISSUING SUCH MATERIAL pursuant to Section 6.02(a) of the Act.
- b) The following requirements must be met in order to incorporate material by reference pursuant to this Section:
 - 1) THE INCORPORATED MATERIAL MUST BE FULLY IDENTIFIED BY LOCATION AND DATE IN THE RULE;
 - 2) THE RULE MUST STATE THAT THE INCORPORATION DOES NOT INCLUDE ANY SUBSEQUENT AMENDMENTS OR EDITIONS;
 - 3) THE AGENCY MUST MAINTAIN A COPY OF THE INCORPORATED MATERIAL AND MAKE SUCH MATERIAL AVAILABLE FOR PUBLIC INSPECTION OR COPYING UPON REQUEST AT NO MORE THAN COST.

(Source: Amended at 10 Ill. Reg. 21769, effective May 1, 1987)

Section 220.780 Incorporation by Reference Pursuant to Section 6.02(b) of the Act

- a) In rulemaking proposed pursuant to Section 5.01 of the Act, an agency may INCORPORATE BY REFERENCE, WITHOUT PUBLISHING

THE INCORPORATED MATERIAL IN FULL, STANDARDS OR GUIDELINES OF AN AGENCY OF THE UNITED STATES pursuant to Section 6.02(b) of the Act provided the following requirements are met:

- 1) The requirements enumerated in Section 220.760(a-c) of this Part; and
 - 2) The agency has applied to the Joint Committee in writing and obtained WRITTEN APPROVAL FROM THE JOINT COMMITTEE, as shown in Exhibit D of this Part, prior to the submission of the second notice required by Section 5.01(b) of the Act. The agency must submit the following information in its application for approval:
 - A) The Part heading, Illinois Administrative Code Part and Section Number, and Illinois Register citation or the date on which the proposed rulemaking will appear in the Illinois Register for the rulemaking in which the agency is seeking to incorporate material by reference;
 - B) A complete copy of the material the agency wishes to incorporate by reference (after approval is granted or denied, such material will be returned to the agency upon request); and
 - C) The name and address of the agency of the United States issuing the material and, if applicable, the name and address of the agency, organization, association or entity distributing the material.
- b) After receipt of a completed application, the Joint Committee shall schedule the agency's request for consideration at the next monthly Joint Committee meeting, provided there are at least 30 days between the receipt of the completed application and the meeting. If there are less than 30 days, the request shall be scheduled for the following meeting.
- c) The Joint Committee shall use the following standard in determining whether to approve an incorporation by reference pursuant to this Section: WHETHER OR NOT THE MATERIAL SOUGHT TO BE INCORPORATED IS READILY AVAILABLE FOR PUBLIC INSPECTION. The Joint Committee shall conclude that this standard is met if the agency adopting the rule certifies that:
- 1) THE AGENCY OF THE UNITED STATES ISSUING OR DISTRIBUTING THE MATTER OR THE ORGANIZATION, ASSOCIATION OR OTHER ENTITY ACTING ON BEHALF OF THE AGENCY OF THE UNITED STATES, MAKES COPIES READILY AVAILABLE TO THE PUBLIC; AND
 - 2) THE AGENCY ADOPTING THE RULE MAINTAINS A COPY OF THE REFERENCED GUIDELINE OR STANDARD AND MAKES IT AVAILABLE TO THE PUBLIC UPON REQUEST FOR INSPECTION AND COPYING AT NO MORE THAN COST.
- d) Readily available, as used in this Part, means immediately available upon request.

- e) The agency must include, as part of its second notice, the date of the Joint Committee's approval of the incorporation by reference. A second notice submitted without the approval required by this Section will be deemed deficient pursuant to Section 220.500(c) of this Part.

(Source: Amended at 10 Ill. Reg. 21769, effective May 1, 1987)

Section 220.800 Joint Committee Hearing

- a) The Joint Committee will hold full and open hearings on proposed rulemakings. The agenda for such hearings will be submitted for publication in the Illinois Register prior to the hearing. Items not included in the published agenda may also be considered by the Joint Committee. Joint Committee staff and agency representatives will be allowed to testify at such hearings. Written comments from members of the public will be considered in lieu of oral testimony. Written comments should be submitted to:

Joint Committee on Administrative Rules
509 South Sixth Street, Room 500
Springfield, Illinois 62701

- b) Comments should be received at least 10 working days prior to the hearing to insure their consideration. If requested by the agency, the Joint Committee will provide a copy of such comments to the agency unless the person or group requests that a copy of the comments not be provided, or unless the comments were provided as part of the complaint review process (1 Ill. Adm. Code 260) and disclosure was not authorized by the complainant.

(Source: Amended at 10 Ill. Reg. 21769, effective May 1, 1987)

Section 220.900 Criteria for Review

- a) The Joint Committee will first consider these criteria in its review of proposed rulemakings:
 - 1) Substantive
 - A) Does the agency have legal authority for each Part of the proposed rulemaking?
 - B) Does each Part of the proposed rulemaking comply with the statutory authority and legislative intent on which it is based, or which it is implementing or interpreting?
 - C) Does each Part of the proposed rulemaking comply with state and federal constitutions, state and federal law, federal rules and regulations, and case law?
 - D) Does each Part of the proposed rulemaking include standards for the exercise of discretionary authority?
 - E) Are the standards defined as clearly and as practicable under the conditions?

F) Does the agency have rulemaking authority?

2) Propriety

- A) Is there an adequate justification and rationale for the proposed rulemaking and for any regulation of the public embodied in the rules?
- B) Has the agency considered the economic effects of the rulemaking upon those regulated, including small businesses, units of local government, school districts, and community college districts?
- C) Has the agency considered less costly alternatives to this proposed rulemaking?
- D) Has the agency considered the budgetary effects of the proposed rulemaking upon itself, other state agencies, and state revenue in general?
- E) Is the language of the rules simple and clear, so that the rules can be understood by the persons and groups which they will affect?
- F) Are the rules free of serious technical errors, redundancies and grammatical or typographical errors, which could affect the meaning of the rules?

3) Procedural

- A) Does the proposed rulemaking comply with Section 5.01 of the Act?
- B) Does the proposed rulemaking comply with the requirements of the Administrative Code Division (see 1 Ill. Adm. Code 100)?
- C) Does the proposed rulemaking comply with any additional requirements which have been imposed on the agency by state or federal law?
- D) Does the proposed rulemaking comply with the agency's own rules for the promulgation of rules?
- E) Was the agency responsive to public comments which were made concerning the rulemaking?
- F) Did the agency comply with Section 4.03 of the Act, if applicable, in connection with the rulemaking?

- b) If the Joint Committee determines that one or more of the criteria enumerated in subsection (a) are not met, the Committee shall issue an objection or recommendation pursuant to Section 220.1000 of this Part.

(Source: Amended at 10 Ill. Reg. 21769, effective May 1, 1987)

Section 220.950 Filing Prohibition Criteria

- a) If the Joint Committee finds that the proposed rulemaking does not meet one or more of the criteria in Section 220.900, the Joint Committee will then consider the proposed rulemaking in relation to the following criteria pursuant to Section 7.06(a) of the Act:

- 1) Does the proposed rulemaking constitute a serious threat to the public interest?
 - A) Does the proposed rulemaking contain policies which have been previously considered and rejected by the General Assembly?
 - B) Does the proposed rulemaking unconstitutionally or unlawfully discriminate against any citizen of the state?
 - C) Does the proposed rulemaking unconstitutionally or unlawfully inhibit the free exercise of the rights of any citizen of the state?
 - 2) Does the proposed rulemaking constitute a serious threat to the public safety?
 - A) Could the proposed rulemaking result in a decrease in the protection provided against threats to the safety of any citizen of the state?
 - B) Could the proposed rulemaking result in an increase in the threat of physical harm to any citizen of the state?
 - 3) Does the proposed rulemaking constitute a serious threat to the public welfare?
 - A) Does the proposed rulemaking impose unreasonable or unnecessary economic costs on any citizen of the state?
 - B) Does the proposed rulemaking adversely affect the health or well-being of any citizen of the state?
 - C) Does the rulemaking adversely affect the quality of life of any citizen of the state?
- b) If the Joint Committee determines that one or more of the criteria enumerated in this Section are met, the Joint Committee shall prohibit the filing of the rule pursuant to Section 220.1000(c) of this Part.

(Source: Amended at 10 Ill. Reg. 21769, effective May 1, 1987)

Section 220.1000 Joint Committee Action

- a) Objection
 - 1) If the Joint Committee finds that the proposed rule or rulemaking does not meet one or more of the criteria in Section 220.900 of this Part, the Joint Committee shall object to the rulemaking pursuant to Section 7.06 of the Act.
 - 2) If the Joint Committee objects to the proposed rule or rulemaking, it shall certify that fact to the agency. Such certification will be sent to the agency in the form shown in Exhibit E of this Part within 5 working days after the Joint Committee hearing. The certification shall include a statement of the specific objections of the Joint Committee to the proposed rule or rulemaking. The Joint Committee shall also

send to the agency a list of the agreements reached between the agency and the Joint Committee staff concerning changes to the proposed rule.

- 3) Each statement of specific objection shall also be submitted to the Administrative Code Division for publication in the next available issue of the Illinois Register.

b) Recommendation

- 1) If the Joint Committee determines that the proposed rule or rulemaking is incomplete or inconsistent, or does not meet one or more of the criteria in Section 220.900 of this Part, the Joint Committee shall recommend further action. Recommended actions include the promulgation of additional rules, the clarification of statutory authority through legislation to be introduced by the agency or the Joint Committee, a request of federal or State agencies in clarifying and assisting in the promulgation of accurate rules and a recommendation to curtail an unauthorized practice.
- 2) If the Joint Committee issues a recommendation to the proposed rule or rulemaking, it shall send a copy of the recommendation to the agency within 5 working days after the Committee hearing. The Joint Committee shall also send to the agency a list of the agreements reached between the agency and the Joint Committee staff concerning changes to the proposed rule.
- 3) Each statement of specific recommendation shall also be submitted to the Administrative Code Division for publication in the next available issue of the Illinois Register.

c) Prohibition Against Filing

- 1) If the Joint Committee finds that the proposed rule or rulemaking, or a portion thereof, is objectionable under one or more of the criteria in Section 220.900 of this Part, and that the rulemaking meets any of the criteria in Section 220.950 of this Part, the Joint Committee shall prohibit filing of the rulemaking or portion thereof pursuant to Section 7.06a of the Act. Such action can only be taken upon the affirmative vote of three-fifths of the members appointed to the Joint Committee.
- 2) If the Joint Committee prohibits the filing of the proposed rule or portion thereof, the Joint Committee shall certify that fact to the agency and the Administrative Code Division. Such certification will be sent to the agency and the Administrative Code Division in the form shown in Exhibit F of this Part within 5 working days after the Joint Committee hearing. The certification shall include a statement of the reasons for the Joint Committee's prohibition against filing of a proposed rule or rulemaking or portion thereof.
- 3) Each certification of prohibition against filing of a proposed rule or rulemaking shall also be submitted to the Administrative Code Division for publication in the next available issue of the Illinois Register.

- 4) THE PROPOSED RULE OR RULEMAKING OR PORTION THEREOF SHALL NOT BE ACCEPTED FOR FILING BY THE ADMINISTRATIVE CODE UNIT AND SHALL NOT TAKE EFFECT FOR AT LEAST 180 DAYS FROM RECEIPT OF THE CERTIFICATION OF PROHIBITION BY THE ADMINISTRATIVE CODE UNIT. A PROPOSED RULE OR RULEMAKING OR PORTION THEREOF WHICH IS PROHIBITED FROM BEING FILED CANNOT BE ENFORCED OR INVOKED FOR ANY REASON BY THE AGENCY. (Ill. Rev. Stat. 1985, ch. 127, par. 1007.06a(b))
- 5) THE JOINT COMMITTEE SHALL INTRODUCE A JOINT RESOLUTION IN EITHER HOUSE OF THE GENERAL ASSEMBLY TO CONTINUE THE PROHIBITION OF THE PROPOSED RULEMAKING. IF SUCH A JOINT RESOLUTION IS PASSED BY THE GENERAL ASSEMBLY WITHIN 180 DAYS FROM RECEIPT OF CERTIFICATION BY THE ADMINISTRATIVE CODE DIVISION, THE PROPOSED RULE OR RULEMAKING OR PORTION THEREOF SHALL NOT TAKE EFFECT. SUCH RULE OR PORTION THEREOF SHALL NOT BE ACCEPTED FOR FILING BY THE ADMINISTRATIVE CODE UNIT. IF A JOINT RESOLUTION IS NOT PASSED WITHIN 180 DAYS FROM RECEIPT OF CERTIFICATION OF PROHIBITION BY THE ADMINISTRATIVE CODE DIVISION, THE AGENCY MAY FILE THE PROPOSED RULE OR RULEMAKING OR PORTION THEREOF AS ADOPTED AND IT SHALL TAKE EFFECT.
- 6) Upon the affirmative vote of the majority of the members of the Joint Committee voting, a prohibition against the filing of a rule may be withdrawn. Withdrawal of a prohibition against filing must be done prior to the passage of the Joint Resolution by the General Assembly. The Joint Committee shall issue a Certification of Withdrawal of Filing Prohibition of Proposed Rulemaking to the agency in the manner shown in Exhibit G of this Part and shall certify that Part to the Administrative Code Division within 5 working days after the Joint Committee hearing.

d) Ratification of Agreements and Certification of No Objection

- 1) If the Joint Committee finds that the proposed rule or rulemaking is not objectionable, and no objection was recommended by the Joint Committee staff, the Committee shall issue a Certification of No Objection to the rule or rulemaking in the manner shown in Exhibit H of this Part. Such Certification shall be mailed to the agency within 5 working days following the Joint Committee hearing.
- 2) A Certification of No Objection shall not be issued if the Joint Committee finds at its hearing that additional information is necessary in order to complete the review of the proposed rule or rulemaking.
- 3) The Joint Committee shall consider all staff level agreements regarding the proposed rules in the form of a vote to ratify the agreements.

(Source: Amended at 10 Ill. Reg. 21769, effective May 1, 1987)

Section 220.1100 Adoption of Rules

- a) The agency may adopt a proposed rulemaking pursuant to Section 6 of the Act in the following circumstances:
 - 1) The 45 day or agreed upon notice period subsequent to the filing of second notice has expired; or
 - 2) The agency has received a Certification of No Objection; or
 - 3) The agency has responded to a statement of objection issued by the Joint Committee as required by Section 220.1200 of this Part.
- b) The agency must file a certified copy of the rulemaking with the Administrative Code Division in the form prescribed in the Code Division's rules. (1 Ill. Adm. Code 100) The rule must be accompanied by a certified statement, signed by the agency head, which states that no changes were made to the rule since the commencement of the second notice period other than those listed in the document entitled "Agreements" which has been ratified by the Joint Committee, and those changes made in response to an objection or recommendation issued by the Committee. The form of the certification is shown in 1 Ill. Adm. Code 100 Appendix B, Illustration D.
- c) All proposed rulemaking must be adopted within one year of the first notice published pursuant to Section 5.01(d) of the Act. No rulemaking may be adopted or filed with the Administrative Code Division after the expiration of this period.

(Source: Section repealed, new Section adopted at 10 Ill. Reg. 21769, effective May 1, 1987)

Section 220.1150 Failure to Object or Issue a Recommendation

THE FAILURE OF THE JOINT COMMITTEE TO ISSUE AN OBJECTION OR RECOMMENDATION TO A PROPOSED RULEMAKING SHALL NOT BE CONSTRUED TO IMPLY APPROVAL OF THE PROPOSED RULEMAKING BY THE JOINT COMMITTEE OR THE GENERAL ASSEMBLY. (Ill. Rev. Stat. 1985, ch. 127, par. 1007.04)

(Source: Added at 10 Ill. Reg. 21769, effective May 1, 1987)

Section 220.1200 Response to Objection

- a) THE AGENCY SHALL RESPOND TO AN OBJECTION WHICH IS ISSUED BY THE JOINT COMMITTEE WITHIN 90 DAYS AFTER RECEIPT OF THE STATEMENT OF OBJECTION. The response shall be made in writing, in the manner shown in Exhibit I of this Part, and shall be signed by the agency head. Responses to a single objection cannot be combined (e.g. modify in part, refuse in part) pursuant to Section 7.06 of the Act.

- b) The agency shall respond to each objection of the Joint Committee by one of the methods enumerated in this subsection, as required by Section 7.06 of the Act.
- 1) MODIFY THE PROPOSED RULEMAKING TO MEET THE JOINT COMMITTEE'S OBJECTION(S);
 - 2) WITHDRAW THE PROPOSED RULEMAKING; OR
 - 3) REFUSE TO MODIFY THE PROPOSED RULEMAKING.
- c) Responses must be submitted directly to the Joint Committee, which shall in turn notify to the Administrative Code Division, in writing, within two working days, that such response has been received. The Administrative Code Division is prohibited from accepting for filing and adoption any rulemaking to which the Joint Committee has objected without first receiving a notification of agency response from the Committee.
- d) Responses which do not meet the requirements of this Section will be rejected. Rejected responses will be returned to the agency within two working days of receipt by the Joint Committee with a written explanation for the rejection, and the Administrative Code Division will be notified not to accept the rule for filing and adoption. The agency can resubmit the response to the Joint Committee within the 90 day response period. The 90 day response period will continue to run when a response is rejected.
- e) The agency shall submit a notice of the response to the Administrative Code Division for publication in the next available issue of the Illinois Register.
- f) A modification to meet the Joint Committee's objection must be limited to the issues raised in the Certification and Statement of Objection. A suggestion or comment made by a member of the Joint Committee does not authorize a substantive change unless the suggestion or comment is ratified by the Joint Committee through the issuance of a Certification and Statement of Objection to the proposed rulemaking.
- g) The failure of an agency to respond to an objection of the Joint Committee within 90 days of the receipt of the objection shall be deemed to be a withdrawal of the proposed rule in its entirety (or the portions thereof for which a second notice was submitted if the procedures outlined in Section 220.500(e) of this Part were met), pursuant to Section 7.06(f) of the Act. A response is required when the second notice period has been extended beyond the 45 day period by mutual agreement of the agency and the Joint Committee. If the Joint Committee issues an objection beyond the 45 day second notice period, and no mutual agreement to extend the period was made, response by the agency is optional.

(Source: Amended at 10 Ill. Reg. 21769, effective May 1, 1987)

Section 220.1250 Response to Recommendation

- a) The agency should respond to a recommendation which is issued by the Joint Committee within 90 days after receipt of the statement of specific recommendations. The agency response should address each of the specific recommendations stated by the Joint Committee and should clearly state the nature (agreement to modify, agreement to withdraw, refusal to modify or withdraw) and rationale for the response. The response should be made in the manner shown in Exhibit J of this Part.
- b) The agency should respond to each Joint Committee recommendation for action in one of the following ways:
 - 1) Agree to pursue the action recommended by the Joint Committee.
 - 2) Refuse to pursue the action recommended by the Joint Committee.
- c) Responses should be submitted to the Joint Committee, in writing, and signed by the agency head.
- d) The failure to an agency to respond to a recommendation of the Joint Committee within 90 days of receipt of the recommendation shall be deemed to be a refusal.

(Source: Added at 10 Ill. Reg. 21769, effective May 1, 1987)

Section 220.1300 Analysis of Agency Response

- a) If the Joint Committee finds that the agency's response does not remedy an objection, the Committee will notify the agency and submit a copy of such notification to the Administrative Code Division for publication in the Illinois Register pursuant to Section 7.06 of the Act. The notice will include a statement of the reasons the Joint Committee has determined that the objection has not been remedied.
- b) If the Joint Committee finds that the agency's response does not remedy a recommendation, it will notify the agency and submit a copy of such notification to the Administrative Code Division for publication in the next available issue of the Illinois Register pursuant to Section 7.06 of the Act. The notice will include a specific statement of the reasons the Joint Committee has determined the recommendation has not been remedied. Failure of the agency to respond to a Joint Committee recommendation shall be deemed to be a refusal to pursue the recommended action.
- c) IF THE AGENCY FAILS TO REMEDY AN OBJECTION OR RECOMMENDATION, THE JOINT COMMITTEE MAY DRAFT LEGISLATION TO ADDRESS THE PROBLEMS. SUCH LEGISLATION MUST BE APPROVED BY A MAJORITY VOTE AND MAY BE INTRODUCED IN EITHER HOUSE OF THE GENERAL ASSEMBLY. (Ill. Rev. Stat. 1985, ch. 127, par. 1007.06)

(Source: Section repealed, new Section adopted at 10 Ill. Reg. 21769, effective May 1, 1987)

Section 220.1350 Certification of Filing Prohibition; Statement of Specific Objections (Repealed)

(Source: Repealed at 10 Ill. Reg. 21769, effective May 1, 1987)

Section 220.1400 Review of Response to Objection (Repealed)

(Source: Repealed at 10 Ill. Reg. 21769, effective May 1, 1987)

Section 220.1500 Failure to Respond (Repealed)

(Source: Repealed at 10 Ill. Reg. 21769, effective May 1, 1987)

Section 220.1600 Limit of Substantive Changes (Repealed)

(Source: Repealed at 10 Ill. Reg. 21769, effective May 1, 1987)

Section 220.1700 Recommend Legislation (Repealed)

(Source: Repealed at 10 Ill. Reg. 21769, effective May 1, 1987)

Section 220.Exhibit A State Mandates Act Questionnaire

Agency: _____

Heading of the Part: _____

Administrative Code Citation: _____

Signature of Agency Head: _____

1. Does this rulemaking affect a municipality, county, township, other unit of local government, school district or community college district?

Yes _____

No _____

If yes, please check the type of entity or entities which are affected.

Municipality	_____
County	_____
Township	_____
Other Unit of	_____
local government	_____
School district	_____
Community College	_____
district	_____

2. Does this rule require a unit of local government, a school district, or a community college district to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues?

Yes _____

No _____

Total number of units affected _____

If yes, please estimate the amount of additional expenditures necessitated by this rulemaking per unit of government:

\$ _____

NOTE: If the dollar amount, or total number of units affected is unknown, please outline and attach to this form a specific and detailed explanation of the steps taken by the agency to determine the approximate expense of the rulemaking, and the number of units affected.

If no, please explain why the rule does not necessitate such additional expenditures.

3. Were any alternatives to the rule, which did not necessitate additional expenditures considered?

Yes _____ No _____

If yes, please list these alternatives and explain why these alternatives were rejected.

4. What is the policy objective(s) of the rulemaking? (Please be specific)

5. Please explain, in detail, why the policy objective(s) of this rule cannot be achieved in the absence of the rule.

(Source: Added at 10 Ill. Reg. 21769, effective May 1, 1987)

Section 220. Exhibit B Agency Analysis of Economic and Budgetary Effects of Proposed Rulemaking

Agency: _____

Heading of the Part: _____

Administrative Code Citation: _____

Signature of Agency Head: _____

What are the legal reasons for the proposed agency action? Please provide a citation to the Public Act or law, Code of Federal Regulations or copy of the case. Check as many as are applicable:

Illinois Public Act	_____
Federal Law	_____
State Court Decision	_____
Federal Court Decision	_____
Federal Rules or Regulations	_____
State Administrative Decision	_____
Other (Please specify)	_____

What is the agency's policy objective for the proposed rulemaking?

A. Economic Effect on the Persons Regulated by the Rule ,

1. What will the economic effect be on persons who will be regulated by the proposed rulemaking? Please complete the following:

(a) The economic effect on persons regulated will be:

Please check: Positive _____ Negative _____ No effect _____

(b) The approximate economic impact in dollars will be \$ _____.

Note: If the dollar amount is unknown, please outline and attach to this form a specific and detailed explanation of the steps taken by the agency to determine the approximate impact of the rulemaking.

(c) Will the rulemaking impact any existing grants or contracts within the current contract period?

(1) Please check: Yes _____ No _____

(2) If so, please explain:

2. Will there be any new reporting requirements as a result of this rulemaking?

(a) Please check: Yes _____ No _____

(b) If yes, please specify:

(c) Specify the approximate number of person hours needed annually to complete the new proposed reporting requirements.

Please check:

1 - 4 hours	_____
5 - 12 hours	_____
13 - 25 hours	_____
25 or more	_____

3. Does the proposed rulemaking change any current reporting requirements?

(a) Please check: Yes No

(b) If yes, please specify:

(c) Specify the approximate number of person hours needed annually to complete the current reporting requirements.

Please check: 1 - 4 hours _____
 5 - 12 hours _____
 13 - 25 hours _____
 25 or more _____

4. What is the schedule for completing the reporting requirements?

Please check:

Daily	
Weekly	
Monthly	
Quarterly	
Semi-Annually	
Annually	
Other (Please specify)	

5. Please circle the number of employees that will be needed to complete the required reporting requirements.

1 2 3 4 5 More than 5 (Please specify)

6. Reporting requirements will best be handled by:

Please check: Typist _____
 Bookkeeper _____
 Word Processor _____
 Computer Input Operator _____
 Executive Secretary _____
 College Graduate _____
 Accountant _____
 Attorney _____
 Supervisory Personnel _____
 Private Consultant _____
 Other (Please specify) _____

7. Does the proposed rulemaking require the completion of any forms?

Yes _____ No _____

(a) If yes, how many forms? _____

(b) Specify the number of pages of the form or forms: _____

(c) Will the proposed rulemaking require forms to be submitted to the agency?

Yes _____ No _____

8. Please circle the business sector or sectors that will be affected by the proposed rulemaking. Indicate the total number of individual firms, the total number of employees, and the number of individual firms in the business sector or sectors affected in Illinois.

Business Sectors	Total Number of Individual Firms in the Business Sector	Total Number of Employees in the Business Sector	Number of Individual Firms in the Business Sector Affected in Illinois
Agriculture	_____	_____	_____
Construction	_____	_____	_____
Finance	_____	_____	_____
Fishing	_____	_____	_____
Forestry	_____	_____	_____
Insurance	_____	_____	_____
Manufacturing	_____	_____	_____
Mining	_____	_____	_____
Professional Services	_____	_____	_____
Real Estate	_____	_____	_____
Retail Trade	_____	_____	_____
Services	_____	_____	_____
Transportation	_____	_____	_____
Wholesale Trade	_____	_____	_____
*All Sectors of Business	_____	_____	_____
*Other (please specify below)	_____	_____	_____

9. Please circle the number of regulatory alternatives considered by the agency:

0 1 2 3 4 5 6 7 8 9 10

If more than 10, please specify the number: _____

- (a) Were any alternatives considered to minimize the burden on small businesses?

Yes _____ No _____

If yes, please specify the alternatives considered and why they were rejected.

- (b) Were any other alternatives considered?

Yes _____ No _____

If yes, please specify the alternatives considered and why they were rejected.

Note: If additional space is needed please provide an attachment.

B. Anticipated Cost of the Regulation on the Proposing Agency's Budget

1. Will the proposed rulemaking implement a new program?

(a) Yes _____ No _____

- (b) If yes, please provide the program title.

2. Will the proposed rulemaking change an existing program?

(a) Yes _____ No _____

(b) If yes, please provide the program title.

3. What is the anticipated effect of the proposed rulemaking on the agency's budget?

(a) Please check: Increase _____ Decrease _____ No change _____

(b) If an increase or decrease is anticipated, specify the fiscal year in which this change will first occur. FY _____.

(c) For the fiscal year specified above, please provide the fund allocations earmarked for this program.

Fund Name _____
Organizational Unit _____

Personal Services	\$ _____
Retirement Contributions	_____
Social Security	_____
Group Insurance	_____
Contractual Services	_____
Travel	_____
Commodities	_____
Printing	_____
Equipment	_____
Electronic Data Processing	_____
Telecommunications Services	_____
Operation Auto Equipment	_____
Total	\$ _____

Note: If the agency has not broken down its allocation for this particular program by the above line items, it should so indicate, and provide a total amount.

4. Has the agency received any federal grants to implement the proposed rulemaking?

(a) Please specify: Yes _____ No _____

(b) If yes, please specify the fiscal year in which the federal grants will first be received. FY _____.

(c) Please provide the federal fund number, as reported to the Bureau of the Budget: _____

(d) For the fiscal year specified above, please provide the budget allocations earmarked for this program.

Federal Fund Name

Organizational Unit

Personal Services	\$ _____
Retirement Contributions	_____
Social Security	_____
Group Insurance	_____
Contractual Services	_____
Travel	_____
Commodities	_____
Printing	_____
Equipment	_____
Electronic Data Processing	_____
Telecommunications Services	_____
Operation Auto Equipment	_____
Total	\$ _____

Note: If the agency has not broken down its allocation for this particular program by the above line items, it should so indicate, and provide a total amount.

5. Will the proposed rulemaking require any forms to be submitted to the agency?

Yes _____ No _____

(a) If yes, how many forms? _____

(b) Specify number of pages of the form or forms: _____

(c) Please circle the number of agency employees needed to review the forms:

1 2 3 4 5

If less than 1, or more than 5, please specify: _____

6. Will the proposed rulemaking require that forms be reviewed and analyzed by the agency on a periodic basis?

Yes _____ No _____

(a) If yes, how many forms? _____

(b) Specify the number of pages of the form or forms: _____

(c) Please circle the number of times the forms will be analyzed annually:

1 2 3 4 5

If less than 1, or more than 5, please specify: _____

7. Will the proposed rulemaking require that reports be reviewed and analyzed by the agency on a periodic basis?

Yes _____ No _____

(a) If yes, how many reports? _____

(b) Specify the number of pages of the report or reports: _____

(c) Please circle the number of times the reports will be analyzed annually:

1 2 3 4 5

If less than 1, or more than 5, please specify: _____

8. Which of the following best describes how these forms and reports are maintained by the agency? Please check all that apply.

Computerized	_____
Analyzed in Detail	_____
Reviewed Occasionally	_____
Manually Filed	_____
Filed for Future	_____
Reference	_____
Never Looked At	_____
Discarded	_____

C. Anticipated Cost of the Regulation on Other State Agencies

1. What is the anticipated effect of the proposed rulemaking on the budgets of other state agencies?

(a) Increase _____ Decrease _____ No change _____ No effect _____

(b) If an increase or decrease is anticipated, specify the fiscal year in which this change will first occur. FY _____.

(c) For the fiscal year specified above, please provide the budget allocations earmarked for this program.

Federal Fund Name
Organizational Unit

Personal Services	\$ _____
Retirement Contributions	_____
Social Security	_____
Group Insurance	_____
Contractual Services	_____
Travel	_____
Commodities	_____
Printing	_____
Equipment	_____
Electronic Data Processing	_____
Telecommunications Services	_____
Operation Auto Equipment	_____
Total	\$ _____

Note: If the agency has not broken down its allocation for this particular program by the above line items, it should so indicate, and provide a total amount.

2. Other than budgetary effects, will the proposed rulemaking in any way effect another state agency's policies?

(a) Yes _____ No _____

(b) If yes, please specify:

D. Anticipated Cost of the Regulation and its Programs on State Revenue

1. What is the anticipated effect of the proposed rulemaking on State revenue?

(a) Increase _____ Decrease _____ No change _____

(b) If an increase or decrease is anticipated, specify the fiscal year in which this change will first occur. FY _____.

(c) If an increase or decrease is anticipated, for the fiscal year specified above, please provide the following:

(a) Dollar amount \$ _____

(b) Fund name _____

2. If the rulemaking has a positive effect on State revenue, will the money be deposited in the State Treasury?

Yes _____ No _____

3. Will it be necessary for the General Assembly to appropriate any monies generated from this rulemaking proposal prior to its expenditure?

(a) Yes _____ No _____

(b) If yes, please specify the month and year when final General Assembly action will be necessary.

(Source: Added at 10 Ill. Reg. 21769, effective May 1, 1987)

Section 220.Exhibit C Department of Commerce and Community Affairs' Impact Analysis

Agency: _____

Heading of the Part: _____

Administrative Code Citation: _____

Date Agency Notification Received by DCCA: _____

Director's signature: _____

A. Estimate of the economic impact which the regulations will have on various types of small businesses affected by the rulemaking

1. What will the economic effect be on small businesses who will be regulated by the proposed rulemaking? Please complete the following:
The economic effect on small businesses regulated will be:

Please check: Positive _____ Negative _____ No effect _____

2. The approximate economic impact upon small businesses in dollars will be \$ _____.

Note: If the dollar amount is unknown, please outline and attach to this form a specific and detailed explanation of the steps taken by the agency to determine the approximate impact of the rulemaking.

B. Summary of the projected reporting, recordkeeping and other compliance requirements of the proposed rules

1. Will there be any new reporting requirements as a result of this rulemaking?

(a) Please check: Yes _____ No _____

(b) If yes, please specify:

- Please check: 1 - 4 hours _____
 5 - 12 hours _____
 13 - 25 hours _____
 25 or more _____

- (a) Please check: Yes _____ No _____

- Please check: 1 - 4 hours _____
 5 - 12 hours _____
 13 - 25 hours _____
 25 or more _____

- Please check: ☐ Daily ☐ Weekly ☐ Monthly ☐ Quarterly ☐ Semi-Annually ☐ Annually ☐ Other (Please specify) _____

- 1 2 3 4 5 More than 5 (Please specify)

6. Reporting requirements will best be handled by:

Please check:	Typist	_____
	Bookkeeper	_____
	Word Processor	_____
	Computer Input Operator	_____
	Executive Secretary	_____
	College Graduate	_____
	Accountant	_____
	Attorney	_____
	Supervisory Personnel	_____
	Private Consultant	_____
	Other (Please specify)	_____
	_____	_____

7. Does the proposed rulemaking require the completion of any forms?

Yes _____ No _____

(a) If yes, how many forms? _____

(b) Specify the number of pages of the form or forms: _____

(c) Will the proposed rulemaking require forms to be submitted to the agency?

Yes _____ No _____

C. Description of the types and and estimate of the number of small businesses to which the proposed rule will apply

1. Please circle the business sector or sectors that will be affected by the proposed rulemaking. Indicate the total number of individual small business firms, the total number of small business employees, and the number of individual small business firms in the business sector or sectors affected in Illinois.

Business Sectors	Total Number of Individual Small Business Firms in the Business Sector	Total Number of Employees in the Business Sector	Number of Individual Firms Small Business in the Business Sector Affected in Illinois
Agriculture	_____	_____	_____
Construction	_____	_____	_____
Finance	_____	_____	_____
Fishing	_____	_____	_____
Forestry	_____	_____	_____
Insurance	_____	_____	_____
Manufacturing	_____	_____	_____
Mining	_____	_____	_____
Professional Services	_____	_____	_____
Real Estate	_____	_____	_____
Retail Trade	_____	_____	_____
Services	_____	_____	_____
Transportation	_____	_____	_____
Wholesale Trade	_____	_____	_____
*All Sectors of Business	_____	_____	_____
*Other (please specify below)	_____	_____	_____

D. Description of or a listing of alternatives to the proposed rule which would minimize the economic impact of the rule. Such alternative must be consistent with the stated objectives of the applicable statutes and regulations

1. Were any alternatives to the proposed rule which would minimize the economic impact of the rule upon small businesses suggested by DCCA to the proposing agency?

Yes _____ No _____

2. If yes, please specify the alternatives considered and explain how these alternatives would minimize the impact of the rule upon small businesses. Also, provide documentation which substantiates any alternatives suggested by DCCA to the proposing agency.

(Source: Added at 10 Ill. Reg. 21769, effective May 1, 1987)

Section 220. Exhibit D Certification of Approval of Incorporation by Reference

JOINT COMMITTEE ON ADMINISTRATIVE RULES

CERTIFICATION OF APPROVAL OF
INCORPORATION BY REFERENCE

This is to certify that the Joint Committee on Administrative Rules, at its (meeting date) meeting, considered the application for approval of incorporation by reference of the following:

(Title and citation of Standards or Guidelines to be incorporated)

The above incorporation by reference was included in (Heading of the Part, Code Citation), proposed by the (agency name) and published in the (publication date) issue of the Illinois Register. After consideration, the Joint Committee granted approval of the incorporation by reference.

(Meeting Date)

(Typewritten name)
Executive Director

(Source: Added at 10 Ill. Reg. 21769, effective May 1, 1987)

CERTIFICATION OF OBJECTION

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Section 220.Exhibit F Certification of Filing Prohibition of Proposed Rulemaking

JOINT COMMITTEE ON ADMINISTRATIVE RULES

CERTIFICATION OF FILING PROHIBITION OF PROPOSED RULEMAKING

County of Sangamon)
State of Illinois)

The Joint Committee on Administrative Rules hereby certifies that, pursuant to Section 7.06a of the Illinois Administrative Procedure Act, as amended, the Joint Committee on Administrative Rules at its meeting of (meeting date) prohibited the filing of (Heading of the Part, Code Citation) proposed by the (agency name).

A statement of the Joint Committee's specific objections accompanies this certification.

Please take notice that the agency is prohibited from filing the rulemaking with the Secretary of State and from enforcing or invoking for any reason the rulemaking for at least 180 days from the date this certification and statement are received by the Secretary of State.

Certified (date)

(Typewritten name)
(Typewritten name)
Co-Chairmen
Joint Committee on Administrative
Rules

By

(Typewritten name)
Executive Director

Subscribed and sworn to before me this (date) day of (month), 19(year).

Notary Public

(Source: Added at 10 Ill. Reg. 21769, effective May 1, 1987)

JOINT COMMITTEE ON ADMINISTRATIVE RULES

CERTIFICATION OF WITHDRAWAL OF
FILING PROHIBITION OF PROPOSED RULEMAKING

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Section 220.Exhibit H Certification of No Objection to Proposed Rulemaking

JOINT COMMITTEE ON ADMINISTRATIVE RULES

CERTIFICATION OF NO OBJECTION
TO PROPOSED RULEMAKING

This is to certify that the Joint Committee on Administrative Rules, at its (meeting date) meeting, considered (Heading of the Part, Code Citation), proposed by the (agency name) and published in the (Illinois Register publication date) issue of the Illinois Register. After consideration, and based upon the agreements for modification of the rulemaking made by the agency and attached to this document, it was determined by the Joint Committee that no objection will be issued to the above-mentioned rulemaking.

(Meeting Date)

(Typewritten name)
Executive Director

(Source: Added at 10 Ill. Reg. 21769, effective May 1, 1987)

Section 220.Exhibit I Agency Response to Joint Committee Objection to
Proposed Rulemaking

Date: _____

Agency: _____

Heading of the Part: _____

Code Citation: _____

Response (check one): ☐ Modification of Rulemaking to Meet
Objections

☐ Withdrawal of Rulemaking

☐ Refusal to Modify or Withdraw

Signature of Agency Official

Agency Response to Specific Joint Committee Objections:
(Respond to each objection raised by the Joint Committee, indicating clearly
the intended action of the agency in response to each objection and the
rationale for such response. Use additional pages as necessary.)

(Source: Added at 10 Ill. Reg. 21769, effective May 1, 1987)

Section 220.Exhibit J Agency Response to Joint Committee Recommendation

Date: _____

Agency: _____

Heading of the Part: _____

Code Citation: _____

Response (Check one): _____ Agree
 _____ Disagree

Signature of Agency Official

Agency Response to Joint Committee Recommendations:

(Respond to each recommendation made by the Joint Committee, indicating clearly the intended action of the agency in response to each recommendation and the rationale for such response. Use additional pages as necessary.)

(Source: Added at 10 Ill. Reg. 21769, effective May 1, 1987)

TITLE 1: RULES AND RULEMAKING
CHAPTER II: JOINT COMMITTEE ON ADMINISTRATIVE RULES

PART 230
REVIEW OF EMERGENCY RULEMAKING

Section

- 230.1 Basic Policy (Renumbered)
- 230.2 Definition (Renumbered)
- 230.3 Staff Review (Renumbered)
- 230.4 Primary Criteria for Review (Renumbered)
- 230.5 Secondary Criteria for Review (Renumbered)
- 230.6 Objection (Renumbered)
- 230.7 Certification of Objection; Statement of Specific Objections
(Renumbered)
- 230.8 Response to Objection: Format (Renumbered)
- 230.9 Response to Objection: Manner (Renumbered)
- 230.10 Failure to Respond (Renumbered)
- 230.100 Basic Policy
- 230.200 Definitions
- 230.250 State Mandates Act Requirements
- 230.300 Staff Review
- 230.350 Staff Report
- 230.375 Joint Committee Hearing
- 230.400 Criteria for Review
- 230.500 Secondary Criteria for Review (Repealed)
- 230.550 Suspension Criteria
- 230.600 Objection; Recommendation; Suspension
- 230.700 Failure to Object or Issue Recommendation
- 230.800 Response to Objection
- 230.900 Response to Recommendation
- 230.1000 Analysis of Agency Response
- 230.1100 Certification of Suspension; Statement of Specific Objections
(Repealed)
- Exhibit A Certification of Objection to Emergency or Peremptory Rules
- Exhibit B Certification of Recommendation to Emergency or Peremptory Rules
- Exhibit C Certification of Suspension of Emergency or Peremptory Rules
- Exhibit D Agency Response to Joint Committee Objection to Emergency or
Peremptory Rules
- Exhibit E Agency Response to Joint Committee Recommendation to Emergency
or Peremptory Rules
- Exhibit F Certification of Withdrawal of Filing Prohibition of Emergency or
Peremptory Rulemaking

AUTHORITY: Implementing Sections 5.02 and 7.07 and authorized by Section 7.09 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1985, ch. 127, pars. 1005.02, 1007.07, 1007.09).

SOURCE: Adopted at 3 Ill. Reg. 49, p. 230, effective December 10, 1979; rules repealed, new rules adopted and codified at 4 Ill. Reg. 49, p. 166, effective December 1, 1980; amended at 5 Ill. Reg. 5164, effective May 15, 1981; amended at 9 Ill. Reg. 20691, effective January 1, 1986; amended at 10 Ill. Reg. 21717, effective May 1, 1987.

NOTE: Capitalization denotes statutory language.

Section 230.100 Basic Policy

- a) The fact that situations occur in which agencies must take prompt action to adopt rules is recognized by the Joint Committee on Administrative Rules (Joint Committee) and the Act. In some of these instances, emergency rules must be adopted under the process provided for this purpose by Section 5.02 of the Act. However, the Joint Committee believes that public notice and comment is an essential part of the rulemaking process, which should only be by-passed for very serious reasons. The use of the emergency rulemaking process must be limited to situations which reasonably constitute a threat to the public interest, safety or welfare, and which require the adoption of rules upon fewer days' notice than is required by Section 5.01 of the Illinois Administrative Procedure Act (Act). (Ill. Rev. Stat. 1985, ch. 127, par. 1005.01)
- b) The Joint Committee is empowered by Section 7.07 of the Act to examine any rule. The Joint Committee will review each rule adopted through the use of emergency rulemaking under this power. The purpose of this review is to insure that the use of the process is limited only to those situations which meet the requirements of Section 5.02 of the Act. The criteria which are used in this review are stated in Sections 230.400 and 230.550 of this Part.

(Source: Amended at 10 Ill. Reg. 21717, effective May 1, 1987)

Section 230.200 Definitions

- a) The terms and definitions found in 1 Ill. Adm. Code 210.100 are incorporated into this Part.
- b) "Emergency rule" means a rule adopted pursuant to the rulemaking process provided in Section 5.02 of the Act.
- c) "Emergency rulemaking" means the process of adopting a rule as provided in Section 5.02 of the Act.

(Source: Amended at 10 Ill. Reg. 21717, effective May 1, 1987)

Section 230.250 State Mandates Act Requirements

The provisions of 1 Ill. Adm. Code 220.275 are applicable to emergency rules adopted pursuant to this Part.

(Source: Added at 10 Ill. Reg. 21717, effective May 1, 1987)

Section 230.300 Staff Review

The Joint Committee staff will review each emergency rule and rulemaking including both the notice and the text of the rule and rulemaking. This review will be based on the criteria in Sections 230.400, and 230.550 of this Part. The Joint Committee staff may raise questions or problems as a result of its review and will discuss these questions or problems with the agency.

(Source: Amended at 10 Ill. Reg. 21717, effective May 1, 1987)

Section 230.350 Staff Report

The staff will report the results of its review of emergency rules and rulemakings to the Joint Committee at the next monthly Joint Committee meeting, provided there are at least 30 days between the publication of the rulemaking and the meeting. If there are less than 30 days, the rulemaking shall be scheduled for the following meeting. Staff may develop recommendations for consideration by the Joint Committee. Staff recommendations are advisory only and shall not limit the Joint Committee's power to take some other action. The staff will attempt to inform the agency of the substance of the recommendations prior to the Joint Committee's consideration of the emergency rule or rulemaking at a public hearing.

(Source: Added at 10 Ill. Reg. 21717, effective May 1, 1987)

Section 230.375 Joint Committee Hearing

- a) The Joint Committee will hold full and open hearings on emergency rules and rulemakings. The agenda for such hearings will be submitted for publication in the Illinois Register prior to the hearing. Items not included in the published agenda may also be considered by the Joint Committee. Joint Committee staff and agency representatives will be allowed to testify at such hearings. Written comments from members of the public will be considered in lieu of oral testimony. Written comments should be submitted to the attention of the Director of the Joint Committee at the following address:

Joint Committee on Administrative Rules
509 South Sixth Street, Room 500
Springfield, Illinois 62701

- b) Comments should be received at least 10 working days prior to the hearing in order to insure their consideration. If requested by the

agency, the Joint Committee will provide a copy of such comments to the agency, unless the person or group requests that a copy of the comments not be provided, or unless the comments were provided as part of the complaint review process (1 Ill. Adm. Code 260) and disclosure was not authorized by the complainant.

(Source: Added at 10 Ill. Reg. 21717, effective May 1, 1987)

Section 230.400 Criteria for Review

- a) The Joint Committee will first consider the following criteria in its review of emergency rules and rulemakings:
 - 1) Does a situation exist which reasonably constitutes a threat to the public interest, safety or welfare and which requires adoption of the rule upon fewer days' notice than is required by Section 5.01 of the Act?
 - 2) Has the agency stated clearly and completely, in writing, its reasons for finding that such a situation exists?
 - 3) Has the emergency situation arisen through no fault of the agency?
 - 4) Is the emergency rule limited to those matters which are required to meet the emergency situation?
 - 5) Has the agency taken steps to make the emergency rule known to those persons who may be affected by it? Has the agency stated those steps in writing?
 - 6) Has the agency adopted the same emergency rule, or an emergency rule having substantially the same purpose and effect, in the past 24 months? (This provision does not apply to additions to or deletions from the Department of Public Aid's Drug Manual, which are exempt from this limitation pursuant to Section 5.02 of the Act.)
 - 7) Does the agency have legal authority for each Part of the emergency rule?
 - 8) Does each Part of the emergency rule comply with the statutory authority and legislative intent upon which it is based, or which it is implementing or interpreting?
 - 9) Does the agency have rulemaking authority?
- b) If the agency does not propose rulemaking to implement the emergency rule pursuant to Section 5.01 of the Act in the same issue of the Illinois Register in which the emergency rule appears, the Joint Committee will also consider the following criteria in its review of the emergency rule and rulemaking:
 - 1) Substantive
 - A) Does each Part of the emergency rule and rulemaking comply with state and federal constitutions, state and federal law, and case law?
 - B) Does each Part of the emergency rule and rulemaking include standards for the exercise of discretionary

authority? Are the standards defined as clearly as practicable under the conditions?

2) Propriety

- A) Is there an adequate justification and rationale for the emergency rules and rulemaking and for any regulation of the public embodied in the rules?
- B) Has the agency considered the economic effects of the rules upon those regulated, including small businesses and units of local government, school districts, and community college districts?
- C) Has the agency considered less costly alternatives to these emergency rules?
- D) Has the agency considered the budgetary effects of the emergency rules upon itself, other state agencies, and state revenue in general?
- E) Is the language of the emergency rules simple and clear, so that the rules can be understood by the persons and groups which they will affect?
- F) Are the emergency rules free of serious technical errors, redundancies and grammatical or typographical errors, which would affect the meaning of the rules?

3) Procedural

- A) Does the emergency rulemaking comply with the requirements of the Administrative Code Division (1 Ill. Adm. Code 100)?
 - B) Do the emergency rules and rulemaking comply with any additional requirements which have been imposed on the agency by state or federal law?
 - C) Do the emergency rules and rulemaking comply with the agency's own rules for the promulgation of rules?
- c) If the Joint Committee determines that one or more of the criteria enumerated in this Section are not met, the Committee shall issue an objection or recommendation pursuant to Section 230.600(a) or (b) of this Part.

(Source: Amended at 10 Ill. Reg. 21717, effective May 1, 1987)

Section 230.500 Secondary Criteria for Review (Repealed)

(Source: Repealed at 10 Ill. Reg. 21717, effective May 1, 1987)

Section 230.550 Suspension Criteria

- a) If the Joint Committee finds that the emergency rule or rulemaking does not meet one or more of the criteria in Section 230.400, the Joint Committee will then consider the emergency rule and

rulemaking in relation to the following criteria pursuant to Section 7.07a of the Act:

- 1) Does the emergency rule represent a serious threat to the public interest?
 - A) Does the emergency rule contain policies which have been previously considered and rejected by the General Assembly?
 - B) Does the emergency rule unconstitutionally or unlawfully discriminate against any citizen of this state?
 - C) Does the emergency rule unconstitutionally or unlawfully inhibit the free exercise of the rights of any citizen of the state?
 - 2) Does the emergency rule represent a serious threat to the public safety?
 - A) Could the emergency rule result in a decrease in the protection provided against threats to the safety of any citizen of the state?
 - B) Could the emergency rule result in an increase in the threat of physical harm to any citizen of the state?
 - 3) Does the emergency rule represent a serious threat to the public welfare?
 - A) Does the emergency rule impose unreasonable or unnecessary economic costs on any citizen of the state?
 - B) Does the emergency rule adversely affect the health or well-being of any citizen of the state?
 - C) Does the emergency rule adversely affect the quality of life of any citizen of the state?
- b) If the Joint Committee determines that one or more of the criteria enumerated in this Section are met, the Joint Committee shall suspend the emergency rule or portion thereof pursuant to Section 230.600(c) of this Part.

(Source: Amended at 10 Ill. Reg. 21717, effective May 1, 1987)

Section 230.600 Objection; Recommendation; Suspension

a) Objection

- 1) If the Joint Committee finds that the emergency rule or rulemaking does not meet one or more of the criteria in Section 230.400 of this Part, the Joint Committee shall object to the rulemaking pursuant to Section 7.07 of the Act.
- 2) If the Joint Committee objects to the emergency rule or rulemaking, it shall certify that fact to the agency. Such certification will be sent to the agency in the form shown in Exhibit A of this Part within 5 working days after the Joint

Committee hearing. The certification shall include a statement of the specific objection of the Joint Committee to the emergency rulemaking.

- 3) Each statement of specific objection shall also be submitted to the Administrative Code Division for publication in the next available issue of the Illinois Register.

b) Recommendation

- 1) If the Joint Committee finds that the emergency rule or rulemaking is incomplete or inconsistent, or does not meet one or more of the criteria in Section 230.400 of this Part, the Joint Committee shall recommend further action. Recommended actions include additional rulemaking or the introduction of legislation by the agency or the Joint Committee.
- 2) If the Joint Committee issues a recommendation to the emergency rule or rulemaking, it shall certify that fact to the agency. Such certification will be sent to the agency, in the form shown in Exhibit B of this Part, within 5 working days after the Joint Committee hearing. The certification shall include a statement of the specific recommendation of the Joint Committee to the emergency rulemaking.
- 3) Each statement of specific recommendations shall also be submitted to the Administrative Code Division for publication in the next available issue of the Illinois Register.

c) Suspension

- 1) If the Joint Committee finds that the emergency rule or rulemaking, or portion thereof, is objectionable under one or more of the criteria in Section 230.400 of this Part, and that the rulemaking meets any of the criteria in Section 230.550 of this Part, the Joint Committee shall suspend the rule or rulemaking or portion thereof pursuant to Section 7.07a of the Act. Such action can only be taken upon the affirmative vote of three-fifths of the members appointed to the Joint Committee.
- 2) If the Joint Committee suspends the emergency rule or rulemaking or portion thereof, it shall certify that fact to the agency and the Administrative Code Division. Such certification will be sent to the agency and the Administrative Code Division in the form shown in Exhibit C of this Part within 5 working days after the Joint Committee hearing. The certification shall include a statement of the reasons for the Joint Committee's suspension of the emergency rule or rulemaking or portion thereof.
- 3) Each statement of suspension shall also be submitted to the Administrative Code Division for publication in the next available issue of the Illinois Register.
- 4) THE EFFECTIVENESS OF THE EMERGENCY RULE OR RULEMAKING OR PORTION THEREOF SHALL BE SUSPENDED IMMEDIATELY FOR AT LEAST 180 DAYS UPON RECEIPT OF THE CERTIFIED STATEMENT BY THE ADMINISTRATIVE CODE DIVISION. THE SUSPENSION SHALL BE INDICATED

PROMINENTLY AND CLEARLY ON THE FACE OF THE EMERGENCY RULE OR PORTION THEREOF BY THE ADMINISTRATIVE CODE DIVISION. AN EMERGENCY RULE OR PORTION THEREOF WHICH IS SUSPENDED CANNOT BE ENFORCED OR INVOKED FOR ANY REASON BY THE AGENCY. (III. Rev. Stat. 1985, ch. 127, par. 1007.07a(b))

- 5) THE JOINT COMMITTEE SHALL INTRODUCE A JOINT RESOLUTION IN EITHER HOUSE OF THE GENERAL ASSEMBLY TO CONTINUE THE SUSPENSION. PASSAGE OF THE JOINT RESOLUTION BY THE GENERAL ASSEMBLY WITHIN 180 DAYS AFTER THE CERTIFICATION IS RECEIVED BY THE ADMINISTRATIVE CODE DIVISION WILL HAVE THE EFFECT OF REPEALING THE EMERGENCY RULE OR PORTION THEREOF. SUCH RULE OR PORTION THEREOF SHALL BE IMMEDIATELY REMOVED FROM THE COMPILATION OF EFFECTIVE RULES BY THE ADMINISTRATIVE CODE DIVISION. (III. Rev. Stat. 1985, ch. 127, par. 1007.07a(c))
- 6) Upon the affirmative vote of the majority of the members of the Joint Committee voting, a prohibition against the filing of a rule may be withdrawn. Withdrawal of a prohibition against filing must be done prior to the passage of the Joint Resolution in either House of the General Assembly. The Joint Committee shall issue a Certification of Withdrawal of Filing Prohibition of Emergency or Peremptory Rulemaking to the agency in the manner shown in Exhibit F of this Part and shall certify that Part to the Administrative Code Division within 5 working days after the Joint Committee hearing.

(Source: Amended at 10 Ill. Reg. 21717, effective May 1, 1987)

Section 230.700 Failure to Object or Issue Recommendation

THE FAILURE OF THE JOINT COMMITTEE TO ISSUE AN OBJECTION OR RECOMMENDATION TO AN EMERGENCY RULE OR RULEMAKING SHALL NOT BE CONSTRUED TO IMPLY APPROVAL OF THE RULE OR RULEMAKING BY THE JOINT COMMITTEE OR THE GENERAL ASSEMBLY. (III. Rev. Stat. 1985, ch. 127, par. 1007.04)

(Source: Section repealed, new Section adopted at 10 Ill. Reg. 21717, effective May 1, 1987)

Section 230.800 Response to Objection

- a) THE AGENCY SHALL RESPOND TO AN OBJECTION WHICH IS ISSUED BY THE JOINT COMMITTEE WITHIN 90 DAYS AFTER RECEIPT OF THE STATEMENT OF SPECIFIC OBJECTIONS pursuant to Section 7.07 of the Act. The response should be made, in writing, in the manner shown in Exhibit D of this Part, and shall be signed by the agency head. Responses to a single objection cannot be combined (e.g. modify in part, refuse in part).

- b) The agency shall respond to each objection of the Joint Committee by one of the methods enumerated in this subsection, as required by Section 7.07 of the Act.
 - 1) Amend the emergency rule to meet the Joint Committee's objection.
 - 2) Repeal the emergency rule.
 - 3) Refuse to amend or repeal the emergency rule. A notice of refusal must also be submitted to the Administrative Code Division for publication in the Illinois Register if the agency responds in this manner.
- c) If the agency elects to amend or repeal the emergency rule in response to an objection, it shall initiate rulemaking pursuant to Section 5.01 of the Act. The agency shall complete the rulemaking process within 180 days after the rulemaking is proposed in the Illinois Register. An agency may elect to amend or repeal the emergency rule in response to an objection. Amendment of an emergency rule by use of emergency rulemaking shall not violate the provisions of Section 5.02 of the Act, nor will it extend the expiration date of the rule.
- d) An amendment to meet the Joint Committee's objection must be limited to the issues raised in the Certification and Statement of Objection. A suggestion or comment made by a member of the Joint Committee does not authorize a substantive change unless the suggestion or comment is ratified by the Joint Committee through the issuance of a Certification and Statement of Objection to the emergency rule or rulemaking.
- e) The failure of an agency to respond to an objection of the Joint Committee within 90 days of receipt of the objection shall be deemed to be a refusal to amend or repeal the rule pursuant to Section 7.07(g) of the Act.

(Source: Amended at 10 Ill. Reg. 21717, effective May 1, 1987)

Section 230.900 Response to Recommendation

- a) The agency should respond to a recommendation which is issued by the Joint Committee within 90 days after receipt of the statement of specific recommendations. The agency response should address each of the specific recommendations stated by the Joint Committee and should clearly state the nature (agreement to amend, agreement to repeal, refusal to amend or repeal) and rationale for the response. The response should be made in the manner shown in Exhibit E of this Part.
- b) The agency should respond to each Joint Committee recommendation for action in one of the following ways:
 - 1) Agree to pursue the action recommended by the Joint Committee.

- 2) Refuse to pursue the action recommended by the Joint Committee.
- c) Responses should be submitted to the Joint Committee, in writing, and shall be signed by the agency head.
- d) The failure of an agency to respond to a recommendation of the Joint Committee within 90 days of receipt of the recommendation shall be deemed to be a refusal.
- e) The failure of an agency to complete rulemaking which was proposed in response to a recommendation within 180 days after the rulemaking commenced shall be deemed to be a refusal to amend or repeal the rule.

(Source: Section repealed, new Section adopted at 10 Ill. Reg. 21717, effective May 1, 1987)

Section 230.1000 Analysis of Agency Response

- a) If the Joint Committee finds that the agency's response does not remedy the objection, the Committee will notify the agency and submit a copy of such notification to the Administrative Code Division for publication in the Illinois Register pursuant to Section 7.07 of the Act. The notice will include a specific statement of the reasons the Joint Committee has determined that the objection has not been remedied. Failure of the agency to respond to a Joint Committee objection shall be deemed to be a refusal.
- b) If the Joint Committee finds that the agency's response does not remedy the recommendation, it will notify the agency and submit a copy of such notification to the Administrative Code Division for publication in the next available issue of the Illinois Register pursuant to Section 7.07 of the Act. The notice will include a specific statement of the reasons the Joint Committee has determined the recommendation has not been remedied. Failure of the agency to respond to a Joint Committee recommendation shall be deemed to be a refusal to pursue the recommended action.
- c) IF THE AGENCY FAILS TO REMEDY AN OBJECTION OR RECOMMENDATION, THE JOINT COMMITTEE MAY DRAFT LEGISLATION TO ADDRESS THE PROBLEMS. SUCH LEGISLATION MUST BE APPROVED BY A MAJORITY VOTE AND MAY BE INTRODUCED IN EITHER HOUSE OF THE GENERAL ASSEMBLY. (Ill. Rev. Stat. 1985, ch. 127, par. 1007.07)

(Source: Section repealed, new Section adopted at 10 Ill. Reg. 21717, effective May 1, 1987)

Section 230.1100 Certification of Suspension; Statement of Specific Objections (Repealed)

(Source: Repealed at 10 Ill. Reg. 21717, effective May 1, 1987)

Section 230. Exhibit A Certification of Objection to Emergency or Peremptory Rules

County of Sangamon)
State of Illinois)

I, (Director's name), Executive Director of the Joint Committee on Administrative Rules, being first duly sworn on oath, depose and state that, pursuant to Sections 7.04 and 7.07 of the Illinois Administrative Procedure Act, as amended, the Joint Committee on Administrative Rules, at its meeting on (meeting date), objected to the (agency name) (emergency or peremptory rule(s)) entitled or concerning (Heading of the Part, Code Citation), published in the (publication date) Illinois Register.

A statement of the Joint Committee's specific objection(s) accompanies this certification.

Please take notice that failure of the agency to respond to the Joint Committee's objection(s) to a rule within 90 days of receipt of this Certification of Objection shall constitute a refusal to amend or repeal the rule.

(Typewritten name)
Executive Director
Joint Committee on Administrative
Rules

Subscribed and sworn to before me this (Date) day of (month), 19(year).

Notary Public

(Source: Added at 10 Ill. Reg. 21717, effective May 1, 1987)

Section 230. Exhibit B Certification of Recommendation to Emergency or
Peremptory Rules

County of Sangamon)

State of Illinois)

I, (Director's name), Executive Director of the Joint Committee on Administrative Rules, being first duly sworn on oath, depose and state that, pursuant to Sections 7.04 and 7.07 of the Illinois Administrative Procedure Act, as amended, the Joint Committee on Administrative Rules, at its meeting on (meeting date), issued a recommendation concerning the (agency name) (emergency or peremptory rule(s)) entitled or concerning (Heading of the Part, Code Citation), published in the (publication date) Illinois Register.

A statement of the Joint Committee's specific recommendation(s) accompanies this certification.

Please take notice that failure of the agency to respond to the Joint Committee's recommendation(s) to a rule within 90 days of receipt of this Certification of Recommendation shall constitute a refusal to amend or repeal the rule.

(Typewritten name)
Executive Director
Joint Committee on Administrative
Rules

Subscribed and sworn to before me this (Date) day of (Month), 19(Year).

Notary Public

(Source: Added at 10 Ill. Reg. 21717, effective May 1, 1987)

Section 230. Exhibit C Certification of Suspension of Emergency or Peremptory Rules

County of Sangamon)

State of Illinois)

The Joint Committee on Administrative Rules hereby certifies that, pursuant to Section 7.07a of the Illinois Administrative Procedure Act, as amended, the Joint Committee on Administrative Rules, at its meeting on (Meeting Date), suspended the (agency name) rules entitled (Heading of the Part, Code Citation) which were published in the (publication date) Illinois Register.

A statement of the Joint Committee's specific suspension accompanies this certification.

Please take notice that the agency is prohibited from enforcing, or invoking for any reason, these rules which have been suspended and from filing with the Secretary of State any rule having substantially the same purpose and effect as these suspended rules for at least 180 days from the date this certification and statement are received by the Secretary of State.

Certified (Date).

(Signature)

(By:

(Signature)
(Typewritten Name)

(Typewritten name)
(Typewritten name)
Co-Chairmen
Joint Committee on Administrative
Rules

Subscribed and Sworn to before me this (Date) day of (Month), 19(Year).

Notary Public

(Source: Added at 10 Ill. Reg. 21717, effective May 1, 1987)

Section 230.Exhibit D Agency Response to Joint Committee Objection to
Emergency or Peremptory Rules

Date: _____

Agency: _____

Heading of the Part: _____

Code Citation: _____

- Response (check one): _____ Initiate rulemaking to repeal the rules
to meet the Joint Committee's objection
- _____ Initiate rulemaking to amend the rules
to meet the Joint Committee's objection
- _____ Refusal to initiate rulemaking to
remedy the Joint Committee's objection

If rulemaking will be initiated, date notice of proposed rulemaking was, or is
expected to be, published in the Illinois Register _____.

Agency Response to Specific Joint Committee Objections:
(Respond to each of the specific objections raised by the Joint Committee,
indicating clearly the intended action of the agency in response to each
recommendation and the rationale for such response. Use additional pages as
necessary.)

Signature of Agency Head

(Source: Added at 10 Ill. Reg. 21717, effective May 1, 1987)

Section 230. Exhibit E Agency Response to Joint Committee Recommendation to
Emergency or Peremptory Rules

Date: _____

Agency: _____

Heading of the Part: _____

Code Citation: _____

Response (check one): _____ Agree to pursue the action
recommended by the Joint Committee

 _____ Refuse to pursue the action
recommended by the Joint Committee

If rulemaking will be initiated, date notice of proposed rulemaking was, or is
expected to be, published in the Illinois Register _____.

Agency Response to Specific Joint Committee Recommendations:
(Respond to each of the specific objections raised by the Joint Committee,
indicating clearly the intended action of the agency in response to each
recommendation and the rationale for such response. Use additional pages as
necessary.)

Signature of Agency Head

(Source: Added at 10 Ill. Reg. 21717, effective May 1, 1987)

Section 230. Exhibit F Certification of Withdrawal of Filing Prohibition of
Emergency or Peremptory Rulemaking

JOINT COMMITTEE ON ADMINISTRATIVE RULES

CERTIFICATION OF WITHDRAWAL OF
FILING PROHIBITION OF EMERGENCY OR PEREMPTORY RULEMAKING

County of Sangamon)
)
State of Illinois)

The Joint Committee on Administrative Rules hereby certifies that, pursuant to Section 7.06a of the Illinois Administrative Procedure Act, as amended, the Joint Committee on Administrative Rules at its meeting of (meeting date) has withdrawn the prohibition against the filing of (Heading of the Part, Code Citation) proposed by the (agency name). The Joint Committee originally issued this prohibition at its (meeting date) meeting.

Please take notice that the agency is no longer prohibited from filing the rulemaking with the Secretary of State and from enforcing or invoking the rulemaking.

Certified (date)

(Typewritten name)
(Typewritten name)
Co-Chairmen
Joint Committee on Administrative
Rules

By

(Typewritten name)
Executive Director

Subscribed and sworn to before me this (date) day of (month), 19(year).

Notary Public

(Source: Added at 10 Ill. Reg. 21717, effective May 1, 1987)

TITLE 1: RULES AND RULEMAKING
CHAPTER II: JOINT COMMITTEE ON ADMINISTRATIVE RULES

PART 240
REVIEW OF PEREMPTORY RULEMAKING

Section

- 240.1 Basic Policy (Renumbered)
- 240.2 Definitions (Renumbered)
- 240.3 Submission; Staff Review (Renumbered)
- 240.4 Staff Report (Renumbered)
- 240.5 Primary Criteria for Review (Renumbered)
- 240.6 Secondary Criteria for Review (Renumbered)
- 240.7 Objection (Renumbered)
- 240.8 Certification of Objection; Statement of Specific Objections (Renumbered)
- 240.9 Response to Objection: Format (Renumbered)
- 240.10 Response to Objection: Manner (Renumbered)
- 240.11 Rulemaking in Response to Objection (Renumbered)
- 240.12 Failure to Respond (Repealed)
- 240.100 Basic Policy
- 240.200 Definitions
- 240.250 State Mandates Act Requirements
- 240.300 Submission; Staff Review
- 240.400 Staff Report
- 240.450 Joint Committee Hearing
- 240.500 Criteria for Review
- 240.600 Secondary Criteria for Review (Repealed)
- 240.650 Suspension Criteria
- 240.700 Objection; Recommendation; Suspension
- 240.800 Failure to Object or Issue Recommendation
- 240.900 Response to Objection
- 240.1000 Response to Recommendation
- 240.1100 Analysis of Agency Response
- 240.1200 Failure to Respond (Repealed)
- 240.1300 Certification of Suspension; Statement of Specific Objections (Repealed)
- Illustration A Agency Analysis of Economic and Budgetary Effects of Proposed Rulemaking (Repealed)
- Illustration B Certification of Objections to Proposed Rulemaking (Repealed)
- Illustration C Agency Response to Joint Committee Objection to Proposed Rulemaking (Repealed)
- Illustration D Certification of Filing Prohibition of Proposed Rulemaking (Repealed)

- Illustration E Certification of Objection to Emergency or Peremptory Rules (Repealed)
- Illustration F Certification of Suspension of Emergency or Peremptory Rules (Repealed)
- Illustration G Agency Response to Joint Committee Objection to Emergency or Peremptory Rules (Repealed)

AUTHORITY: Implementing Sections 2, 5.03, 7.04, and 7.07 and authorized by Section 7.09 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1985, ch. 127, pars. 1005.03, 1007.04, 1007.07 and 1007.09).

SOURCE: Adopted at 3 Ill. Reg. 49, p. 230, effective December 10, 1979; rules repealed, new rules adopted and codified at 4 Ill. Reg. 49, p. 166, effective December 1, 1980; amended at 5 Ill. Reg. 5164, effective May 15, 1981; amended at 9 Ill. Reg. 20695, effective January 1, 1986; amended at 10 Ill. Reg. 21742, effective May 1, 1987.

NOTE: Capitalization denotes statutory language.

Section 240.100 Basic Policy

- a) The fact that situations occur in which agencies are required by a federal law, federal rules and regulations, collective bargaining agreements, or a court orders to take a prompt action to adopt rules is recognized by the Joint Committee on Administrative Rules (Joint Committee) and the Illinois Administrative Procedure Act (Act) (Ill. Rev. Stat. 1985, ch. 127, par. 1001 et seq.). In some of these instances, peremptory rules must be adopted under the process provided for this purpose by Section 5.03 of the Act. However, the Joint Committee believes that public notice and comment is an essential part of the rulemaking process, which should only be bypassed for very serious reasons. The peremptory process may be used only in situations where the agency has no discretion as to the content of the rule or rulemaking and where it is precluded from complying with the general rulemaking requirements of the Act.
- b) The Joint Committee is empowered by Section 7.07 of the Act to examine any rule. The Joint Committee will review each rule adopted through the use of peremptory rulemaking under this power. The purpose of this review is to insure that use of the process is limited to only those situations which meet the requirements of Section 5.03 of the Act. The criteria which are used in this review are stated in Sections 240.500 and 240.650 of this Part.
- c) THE USE OF THE PEREMPTORY RULEMAKING PROCESS TO IMPLEMENT CONSENT DECREES AND OTHER COURT ORDERS WHICH REFLECT SETTLEMENTS NEGOTIATED BY AN AGENCY IS PROHIBITED pursuant to Section 5.03 of the Act.

(Source: Amended at 10 Ill. Reg. 21742, effective May 1, 1987)

Section 240.200 Definitions

- a) The terms and definitions found in 1 Ill. Adm. Code 210.100 are incorporated into this Part.
- b) "CONDITIONS WHICH PRECLUDE COMPLIANCE WITH THE GENERAL RULEMAKING REQUIREMENTS IMPOSED BY SECTION 5.01 OF THE ACT" include only those conditions which make it impossible to comply with the notice or hearing requirements of the Act. A federal law, federal rule or regulation, or court order which merely makes it more difficult to comply or which prescribes the content of such rulemaking does not make it impossible to comply.
- c) "Federal rules and regulations" means those rules which are published in the Code of Federal Regulations or those rules published as adopted rules in the Federal Register.
- d) "Peremptory rule" means a rule adopted pursuant to the rulemaking process provided in Section 5.03 of the Act.
- e) "Peremptory rulemaking" means the process of adopting a rule as provided in Section 5.03 of the Act.

(Source: Amended at 10 Ill. Reg. 21742, effective May 1, 1987)

Section 240.250 State Mandates Act Requirements

The provisions of 1 Ill. Adm. Code 220.275 are applicable to peremptory rules adopted pursuant to this Part.

(Source: Added at 10 Ill. Reg. 21742, effective May 1, 1987)

Section 240.300 Submission; Staff Review

The agency shall submit a copy of the court order or collective bargaining agreement, or the specific citation to the federal law or federal rules or regulations which require the peremptory rulemaking to the Joint Committee within 30 days after the rule is required or necessary, or on or before the rulemaking is filed with the Administrative Code Division, whichever comes first. Unless the Joint Committee receives a copy of the order or agreement on or before the date the peremptory rule is published in the Illinois Register, the Joint Committee will request a copy, which must be immediately provided by the agency. The Joint Committee staff will review the peremptory rule or rulemaking, including the notice and the text pursuant to the criteria specified in Sections 240.500, and 240.650 of this Part. The staff may raise questions or problems as a result of its review of the rule or rulemaking and will discuss these questions or problems with the agency.

(Source: Amended at 10 Ill. Reg. 21742, effective May 1, 1987)

Section 240.400 Staff Report

The staff will report the results of its review to the Joint Committee at the next monthly Joint Committee meeting, provided there are at least 30 days between the publication of the rulemaking and the meeting. If there are less than 30 days, the rulemaking shall be scheduled for the following meeting. Staff may develop recommendations for consideration by the Joint Committee. Staff recommendations are advisory only and shall not limit the Joint Committee's power to take some other action. The staff will attempt to inform the agency of the substance of the recommendations prior to the Joint Committee's consideration of the peremptory rule or rulemaking at a public hearing.

(Source: Amended at 10 Ill. Reg. 21742, effective May 1, 1987)

Section 240.450 Joint Committee Hearing

- a) The Joint Committee will hold full and open hearings on peremptory rules and rulemakings. The agenda for such hearings will be submitted for publication in the Illinois Register prior to the hearing. Items not included in the published agenda may also be considered by the Joint Committee. Joint Committee staff and agency representatives will be allowed to testify at such hearings. Written comments from members of the public will be considered in lieu of oral testimony. Written comments should be submitted to the attention of the Director of the Joint Committee at the following address:

Joint Committee on Administrative Rules
509 South Sixth St., Room 500
Springfield, Illinois 62701

- b) Comments should be received at least 10 working days prior to the hearing in order to insure their consideration. If requested by the agency, the Joint Committee will provide a copy of such comments to the agency, unless the person or group requests that a copy of the comments not be provided, or unless the comments were provided as part of the complaint review process (1 Ill. Adm. Code 260) and disclosure was not authorized by the complainant.

(Source: Added at 10 Ill. Reg. 21742, effective May 1, 1987)

Section 240.500 Criteria for Review

- a) The Joint Committee will first consider these criteria in its review of peremptory rules and rulemakings:
 - 1) Were conditions present which precluded the agency from complying with the general rulemaking requirements of Section 5.01 of the Act?
 - 2) Was the agency required to adopt the rules as a direct result of federal law, federal rules and regulations, court orders, or a collective bargaining agreement?

- 3) Is the peremptory rule limited to what is required by the federal law, federal rules or regulations, court order?
- 4) Was the agency precluded from the exercise of discretion concerning the content of the peremptory rule?
- 5) Has the agency given an adequate reason for not complying with the notice and hearing requirements of Section 5.01 of the Act?
- 6) Did the agency file the notice of peremptory rulemaking with the Administrative Code Division within 30 days after the change in the rules was required or necessary? Does the notice refer to the federal law, federal rules or regulations, court order, or collective bargaining agreement which required the peremptory rules?
- 7) Did the agency submit a copy of the court order or the specific citation to the federal law or federal rules or regulations which required the peremptory rulemaking to the Joint Committee on or before the notice of peremptory rulemaking was filed with the Administrative Code Division?
- 8) Substantive
 - A) Does the agency have legal authority for each Part of the peremptory rule?
 - B) Does each Part of the peremptory rule comply with the statutory authority and legislative intent on which it is based, or which it is implementing or interpreting?
 - C) Does each Part of the peremptory rule and rulemaking comply with state and federal constitutions, state and federal law, federal rules and regulations, and case law?
 - D) Does each Part of the peremptory rule include standards for the exercise of discretionary authority? Are the standards defined as clearly as practicable under the conditions?
 - E) Does the agency have rulemaking authority?
- 9) Propriety
 - A) Is there an adequate justification and rationale for the peremptory rules and rulemaking and for any regulation of the public embodied in the rules?
 - B) Has the agency considered the economic effects of the rules upon those regulated, including small businesses and units of local government, school districts, and community college districts?
 - C) Has the agency considered less costly alternatives to the peremptory rules?
 - D) Has the agency considered the budgetary effects of the peremptory rules upon itself, other state agencies, and state revenue in general?
 - E) Is the language of the peremptory rules simple and clear, so that the rules can be understood by the persons and groups which they will affect?
 - F) Are the peremptory rules free of serious technical errors, redundancies and grammatical or typographical errors which could affect the meaning of the rules?
- 10) Procedural

- A) Does the peremptory rulemaking comply with the requirements of the Administrative Code Division (1 Ill. Adm. Code 100)?
 - B) Does the peremptory rule and rulemaking comply with any additional requirements which have been imposed on the agency by state or federal law?
 - C) Does the peremptory rule and rulemaking comply with the agency's own rules for the promulgation of rules?
- b) If the Joint Committee determines that one or more of the criteria enumerated in subsection (a) of this Section are not met, the Committee shall issue an objection or recommendation pursuant to Section 240.700(a) or (b) of this Part.

(Source: Amended at 10 Ill. Reg. 21742, effective May 1, 1987)

Section 240.600 Secondary Criteria for Review (Repealed)

(Source: Repealed at 10 Ill. Reg. 21742, effective May 1, 1987)

Section 240.650 Suspension Criteria

- a) If the Joint Committee finds that the peremptory rule or rulemaking does not meet one or more of the criteria in Section 240.500, the Committee will then consider the peremptory rule or rulemaking in relation to the following criteria pursuant to Section 7.07a of the Act:
- 1) Does the peremptory rule represent a serious threat to the public interest?
 - A) Does the peremptory rule contain policies which have been previously considered and rejected by the General Assembly?
 - B) Does the peremptory rule unconstitutionally or unlawfully discriminate against any citizen of the state?
 - C) Does the peremptory rule unconstitutionally or unlawfully inhibit the free exercise of the rights any citizen of the state?
 - 2) Does the peremptory rule represent a serious threat to the public safety?
 - A) Could the peremptory rule result in a decrease in the protection provided against threats to the safety of any citizen of the state?
 - B) Could the peremptory rule result in an increase in the threat of physical harm to any citizen of the state?
 - 3) Does the peremptory rule represent a serious threat to the public welfare?

- A) Does the peremptory rule impose unreasonable or unnecessary economic costs on any citizen of the state?
 - B) Does the peremptory rule adversely affect the health or well-being of any citizen of the state?
 - C) Does the peremptory rule adversely affect the quality of life of any citizen of the state?
- b) If the Joint Committee determines that one or more of the criteria enumerated in this Section are not met, the Committee shall suspend the peremptory rule or portion thereof pursuant to Section 240.700(c) of this Part.

(Source: Amended at 10 Ill. Reg. 21742, effective May 1, 1987)

Section 240.700 Objection; Recommendation; Suspension

a) Objection

- 1) If the Joint Committee finds that the peremptory rule or rulemaking does not meet one or more of the criteria in Section 240.500 of this Part, the Joint Committee shall object to the rulemaking pursuant to Section 7.07 of the Act.
- 2) If the Joint Committee objects to the peremptory rule or rulemaking, it shall certify that fact to the agency. Such certification will be sent to the agency in the form shown in Exhibit A of Part 230 of the Joint Committee's rules (1 Ill. Adm. Code 230.Exhibit A) within 5 working days after the Joint Committee hearing. The certification shall include a statement of the specific objections of the Joint Committee to the peremptory rule or rulemaking.
- 3) Each statement of specific objections shall also be submitted to the Administrative Code Division for publication in the next available issue of the Illinois Register.

b) Recommendation

- 1) If the Joint Committee finds that the peremptory rule or rulemaking is incomplete or inconsistent, or does not meet one or more of the criteria in Section 240.500 of this Part, the Joint Committee shall recommend further action. Recommended actions include the promulgation of general rules, the promulgation of additional rules, the clarification of statutory authority to be introduced by the agency or the Joint Committee or a recommendation to curtail an unauthorized practice.
- 2) If the Joint Committee issues a recommendation to the peremptory rule or rulemaking, it shall certify that fact to the agency. Such certification will be sent to the agency in the form shown in Exhibit B of Part 230 of the Joint Committee's rules (1 Ill. Adm. Code 230.Exhibit B) within 5 working days after the Joint Committee hearing. The certification shall

include a statement of the specific recommendation of the Joint Committee to the peremptory rule or rulemaking.

- 3) Each statement of specific recommendations shall also be submitted to the Administrative Code Division for publication in the next available issue of the Illinois Register.

c) Suspension

- 1) If the Joint Committee finds that the peremptory rule or rulemaking or a portion thereof is objectionable under one or more of the criteria in Section 240.500 of this Part, and that the rule or rulemaking meets any of the criteria in Section 240.650 of this Part, the Joint Committee shall suspend the rule or rulemaking or portion thereof pursuant to Section 7.07a of the Act. Such action can only be taken upon the affirmative vote of three-fifths of the members appointed to the Joint Committee.
- 2) If the Joint Committee suspends the peremptory rule or rulemaking or portion thereof, it shall certify that fact to the agency and the Administrative Code Division. Such certification will be sent to the agency and the Administrative Code Division in the form shown in Exhibit C of Part 230 of the Joint Committee's rules (1 Ill. Adm. Code 230.Exhibit C) within 5 working days after the Joint Committee hearing. The certification shall include a statement of the reasons for the Joint Committee's suspension of the peremptory rule or rulemaking or portion thereof.
- 3) Each statement of suspension shall also be submitted to the Administrative Code Division for publication in the next available issue of the Illinois Register.
- 4) THE EFFECTIVENESS OF THE PEREMPTORY RULE OR RULEMAKING OR PORTION THEREOF SHALL BE SUSPENDED IMMEDIATELY FOR AT LEAST 180 DAYS UPON RECEIPT OF THE CERTIFIED STATEMENT BY THE ADMINISTRATIVE CODE DIVISION. THE SUSPENSION SHALL BE INDICATED PROMINENTLY AND CLEARLY ON THE FACE OF THE PEREMPTORY RULE OR PORTION THEREOF BY THE ADMINISTRATIVE CODE DIVISION. A PEREMPTORY RULE OR PORTION THEREOF WHICH IS SUSPENDED CANNOT BE ENFORCED OR INVOKED FOR ANY REASON BY THE AGENCY. (Ill. Rev. Stat. 1985, ch. 127, par. 1007.07a(b))
- 5) THE JOINT COMMITTEE SHALL INTRODUCE A JOINT RESOLUTION IN EITHER HOUSE OF THE GENERAL ASSEMBLY TO CONTINUE THE SUSPENSION. PASSAGE OF THE JOINT RESOLUTION BY THE GENERAL ASSEMBLY WITHIN 180 DAYS AFTER THE CERTIFICATION IS RECEIVED BY THE ADMINISTRATIVE CODE DIVISION WILL HAVE THE EFFECT OF REPEALING THE PEREMPTORY RULE OR PORTION THEREOF. SUCH RULE OR PORTION THEREOF SHALL BE IMMEDIATELY REMOVED FROM THE COMPILATION OF EFFECTIVE RULES BY THE ADMINISTRATIVE CODE DIVISION. (Ill. Rev. Stat. 1985, ch. 127, par. 1007.07a(c))
- 6) Upon the affirmative vote of the majority of the members of the Joint Committee voting, a prohibition against the filing of a

rule may be withdrawn. Withdrawal of a prohibition against filing must be done prior to the passage of the Joint Resolution by the General Assembly. The Joint Committee shall issue a Certification of Withdrawal of Filing Prohibition of Proposed Rulemaking to the agency in the manner shown in Exhibit F of Part 230 (1 Ill. Adm. Code 230.Exhibit F) and shall certify that Part to the Administrative Code Division within 5 working days after the Joint Committee hearing.

(Source: Amended at 10 Ill. Reg. 21742, effective May 1, 1987)

Section 240.800 Failure to Object or Issue Recommendation

THE FAILURE OF THE JOINT COMMITTEE TO ISSUE AN OBJECTION OR RECOMMENDATION TO A PEREMPTORY RULE OR RULEMAKING SHALL NOT BE CONSTRUED TO IMPLY APPROVAL OF THE RULE OR RULEMAKING BY THE JOINT COMMITTEE OR THE GENERAL ASSEMBLY. (Ill. Rev. Stat. 1985, ch. 127, par. 1007.04)

(Source: Section repealed, new Section adopted at 10 Ill. Reg. 21742, effective May 1, 1987)

Section 240.900 Response to Objection

- a) THE AGENCY SHALL RESPOND TO AN OBJECTION WHICH IS ISSUED BY THE JOINT COMMITTEE WITHIN 90 DAYS AFTER RECEIPT OF THE STATEMENT OF SPECIFIC OBJECTIONS pursuant to Section 7.07 of the Act. The agency response shall address each of the specific objections stated by the Joint Committee and shall clearly state the nature (agreement to amend, agreement to repeal, refusal to amend or repeal) and the rationale for the response. The response should be made in the manner shown in Exhibit D of Part 230 of the the Joint Committee's rules (1 Ill. Adm. Code 230.Exhibit D) and shall be signed by the agency head. Responses to a single objection cannot be combined (e.g. modify in part, refuse in part).
- b) The agency must respond to each objection of the Joint Committee by one of the methods enumerated as follows:
 - 1) Amend the peremptory rule to meet the Joint Committee's objection.
 - 2) Repeal the peremptory rulemaking.
 - 3) Refuse to amend or repeal the peremptory rule. A notice of refusal must also be submitted to the Administrative Code Division for publication in the Illinois Register if the agency responds in this manner.
- c) If the agency elects to amend or repeal the peremptory rule in response to an objection, it shall initiate rulemaking pursuant to Section 5.01 of the Act. The agency shall complete the rulemaking

process within 180 days after the rulemaking is proposed in the Illinois Register.

- d) An amendment to meet the Joint Committee's objection must be limited to the issues raised in the Certification and Statement of Objection. A suggestion or comment made by a member of the Joint Committee does not authorize a substantive change unless the suggestion or comment is drafted by the Joint Committee through the issuance of a Certification and Statement of Objection to the peremptory rule or rulemaking.
- e) The failure of an agency to respond to an objection of the Joint Committee within 90 days of receipt of the objection shall be deemed to be a refusal to amend or repeal the rule pursuant to Section 7.07(g) of the Act.

(Source: Amended at 10 Ill. Reg. 21742, effective May 1, 1987)

Section 240.1000 Response to Recommendation

- a) The agency should respond to a recommendation which is issued by the Joint Committee within 90 days after receipt of the statement of specific recommendations. The agency response should address each of the specific recommendations stated by the Joint Committee and should clearly state the nature (agreement to amend, agreement to repeal, refusal to amend or repeal) and rationale for the response. The response should be made in the manner shown in Exhibit E of Part 230 of the Joint Committee's rules (1 Ill. Adm. Code 230.Exhibit E).
- b) The agency should respond to each Joint Committee recommendation for action in one of the following ways:
 - 1) Agree to pursue the action recommended by the Joint Committee.
 - 2) Refuse to pursue the action recommended by the Joint Committee.
- c) Responses should be submitted to the Joint Committee, in writing, and shall be signed by the agency head.
- d) The failure of an agency to respond to a recommendation of the Joint Committee within 90 days of receipt of the recommendation shall be deemed to be a refusal.
- e) The failure of an agency to complete rulemaking which was proposed in response to a recommendation within 180 days after the rulemaking commenced shall be deemed to be a refusal to amend or repeal the rule.

(Source: Section repealed, new Section adopted at 10 Ill. Reg. 21742, effective May 1, 1987)

Section 240.1100 Analysis of Agency Response

- a) If the Joint Committee finds that the agency's response does not remedy the objection, the Committee will notify the agency and submit a copy of such notification to the Administrative Code Division for publication in the Illinois Register pursuant to Section 7.07 of the Act. The notice will include a specific statement of the reasons the Joint Committee has determined that the objection has not been remedied. Failure of the agency to respond to a Joint Committee objection shall be deemed to be a refusal.
- b) If the Joint Committee finds that the agency's response does not remedy the recommendation, it will notify the agency and submit a copy of such notification to the Administrative Code Division for publication in the next available issue of the Illinois Register pursuant to Section 7.07 of the Act. The notice will include a specific statement of the reasons the Joint Committee has determined the recommendation has not been remedied. Failure of the agency to respond to a Joint Committee recommendation shall be deemed a refusal to pursue the recommended action.
- c) If the agency fails to remedy an objection or recommendation, the Joint Committee may draft legislation to address the problems. Such legislation must be approved by a majority vote and may be introduced in either house of the General Assembly.

(Source: Section repealed, new Section adopted at 10 Ill. Reg. 21742, effective May 1, 1987)

Section 240.1200 Failure to Respond (Repealed)

(Source: Repealed at 10 Ill. Reg. 21742, effective May 1, 1987)

Section 240.1300 Certification of Suspension; Statement of Specific Objections (Repealed)

(Source: Repealed at 10 Ill. Reg. 21742, effective May 1, 1987)

Section 240.Illustration A Agency Analysis of Economic and Budgetary Effects of Proposed Rulemaking (Repealed)

(Source: Repealed at 10 Ill. Reg. 21742, effective May 1, 1987)

Section 240.Illustration B Certification of Objection to Proposed Rulemaking (Repealed)

(Source: Repealed at 10 Ill. Reg. 21742, effective May 1, 1987)

Section 240.Illustration C Agency Response to Joint Committee Objection to Proposed Rulemaking (Repealed)

(Source: Repealed at 10 Ill. Reg. 21742, effective May 1, 1987)

Section 240.Illustration D Certification of Filing Prohibition of Proposed Rulemaking (Repealed)

(Source: Repealed at 10 Ill. Reg. 21742, effective May 1, 1987)

Section 240.Illustration E Certification of Objection to Emergency or Peremptory Rules (Repealed)

(Source: Repealed at 10 Ill. Reg. 21742, effective May 1, 1987)

Section 240.Illustration F Certification of Suspension of Emergency or Peremptory Rules (Repealed)

(Source: Repealed at 10 Ill. Reg. 21742, effective May 1, 1987)

Section 240.Illustration G Agency Response to Joint Committee Objection to Emergency or Peremptory Rules (Repealed)

(Source: Repealed at 10 Ill. Reg. 21742, effective May 1, 1987)

TITLE 1: RULES AND RULEMAKING
CHAPTER II JOINT COMMITTEE ON ADMINISTRATIVE RULES

PART 260
COMPLAINT REVIEWS

Section	
260.100	Authority and Purpose
260.200	Definitions
260.300	Items to be Included in Complaints
260.350	Complaints Concerning Agency Rules Not Adopted Pursuant to the Illinois Administrative Procedure Act
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Exhibit A	Certification of Objection to Existing Rules or Policies
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ILLUSTRATION H	Certification of Objection to Existing Rules (Repealed)
ILLUSTRATION I	Agency Response to Joint Committee Objection to Existing Rules (Repealed)
ILLUSTRATION J	Certification of Recommendation (Repealed)

AUTHORITY: Implementing Sections 7.04 and 7.07 and authorized by Section 7.09 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1985, ch. 127, pars. 1007.04, 1007.07 and 1007.09).

SOURCE: Adopted at 3 Ill. Reg. 34, p. 219, effective August 24, 1979; rules repealed, new rules adopted and codified at 4 Ill. Reg. 49, p. 166, effective December 1, 1980; amended at 6 Ill. Reg. 9314, effective August 1, 1982; amended at 10 Ill. Reg. 21687, effective May 1, 1987.

NOTE: Capitalization denotes statutory language.

Section 260.100 Authority and Purpose

- a) The Joint Committee on Administrative Rules (Joint Committee) will review policies and rules of state agencies when it receives a written complaint concerning such policies or rules as provided in this Part. This review is authorized by Sections 7.04 and 7.07 of the Illinois Administrative Procedure Act (Act) (Ill. Rev. Stat. 1985, ch. 127, par. 1007.04), 1007.07) and is intended to facilitate the promotion of adequate and proper rules by agencies and the understanding on the part of the public respecting such rules.
- b) The review conducted pursuant to this Part shall be considered to be a legislative investigation and is not intended as a prerequisite in any way to judicial relief.

(Source: Amended at 10 Ill. Reg. 21687, effective May 1, 1987)

Section 260.200 Definitions

- a) The terms and definitions found in 1 Ill. Adm. Code 210.100 are incorporated into this Part.
- b) For the purposes of this Part, a complaint consists of any written communication received by the Joint Committee which raises questions which are related to the criteria in Section 260.700 of this Part. Complaints may address one or more of the following:
 - 1) An existing rule of an agency.
 - 2) The failure of an agency to fully or properly enforce its rules.
 - 3) The absence of rules which are required by statute or are necessary for the proper conduct of an agency program or function.
 - 4) An agency rule which is applied generally, but is not embodied in the rules of the agency promulgated pursuant to the Illinois Administrative Procedure Act.

(Source: Amended at 10 Ill. Reg. 21687, effective May 1, 1987)

Section 260.300 Items to be Included in Complaints

- a) Complaints should be sent to the Director at the following address:

Joint Committee on Administrative Rules
509 South Sixth Street, Room 500
Springfield, Illinois 62701
- b) Each complaint must include, at a minimum, the following items, if applicable to the particular complaint:
 - 1) A discussion of the issues involved.
 - 2) The names and addresses of the persons or groups making the complaint.
 - 3) The agency whose rules, policies, or practices are being questioned.

- 4) The specific rule or set of rules involved.
- 5) A description of the effect of the rules, policies or practices on the persons or groups making the complaint.
- 6) A discussion of any additional facts necessary to understand the issues.
- 7) A discussion of how the issues relate to the criteria in Section 260.700 of this Part.

(Source: Amended at 10 Ill. Reg. 21687, effective May 1, 1987)

Section 260.350 Complaints Concerning Agency Rules Not Adopted Pursuant to the Illinois Administrative Procedure Act

- a) Agency rules which are not adopted in accordance with the procedures set forth in the Act are invalid and unenforceable. When the Joint Committee receives a complaint which alleges the enforcement of a rule which is not embodied in any properly promulgated rule, the Joint Committee will undertake an investigation pursuant to this Part.
- b) When a complaint is received which alleges that an agency has a rule which is not embodied in properly promulgated rules, the Joint Committee will encourage the persons making the complaint to petition the agency as provided in Section 8 of the Act.

(Source: Added at 10 Ill. Reg. 21687, effective May 1, 1987).

Section 260.400 Staff Review

The staff of the Joint Committee will review each complaint. The staff may raise questions or problems as a result of its review and will discuss these questions or problems with the agency. Such staff review will be based on the criteria in Section 260.700 of this Part. The staff will attempt to inform the agency of the substance of the complaint and any recommendations for Joint Committee action prior to the Joint Committee hearing.

(Source: Amended at 10 Ill. Reg. 21687, effective May 1, 1987)

Section 260.500 Complaints About Policies Not in Rules (Repealed)

(Source: Repealed at 10 Ill. Reg. 21687, effective May 1, 1987)

Section 260.600 Staff Report

The staff shall report the results of its review to the Joint Committee at the next monthly meeting, provided there are at least 60 days between receipt of the complaint and the meeting. If there are less than 60 days, the rulemaking shall be scheduled for the following meeting. The staff report will present evidence of possible problems with the rules in relation to the criteria in Section 260.700 of this Part. The report may include recommendations for

action by the Joint Committee. Such recommendations shall be advisory only and shall not limit the Joint Committee's power to take some other action.

(Source: Amended at 10 Ill. Reg. 21687, effective May 1, 1987)

Section 260.650 Joint Committee Hearing

A complaint may be placed on the agenda of the Joint Committee for consideration by any member of the Committee or by the Director. Such action will be based upon evidence of possible problems with the rules in relation to the criteria in Section 260.700 of this Part. A complaint will not be placed on the agenda if the same issues have been previously considered by the Joint Committee, unless the complaint reveals information which was not available to the Joint Committee at the time the issue was considered and which if available at that time would have altered the outcome. At the hearing, the Joint Committee staff, the complainant, and agency representatives will be allowed to testify.

(Source: Added at 10 Ill. Reg. 21687, effective May 1, 1987)

Section 260.700 Criteria for Review

- a) The Joint Committee will use the following criteria in its review of a complaint based upon existing rules:

- 1) Substantive

- A) Does the agency have legal authority for each Part of the rules?
- B) Does the agency have rulemaking authority?
- C) Does each Part of the rules comply with the statutory authority and legislative intent on which it is based, or which it is implementing or interpreting?
- D) Does each Part of the rules comply with state and federal constitutions, state and federal law, federal rules and regulations, and case law?
- E) Does each Part of the rules include standards for the exercise of discretionary authority? Are the standards defined as clearly as practicable under the conditions?

- 2) Propriety

- A) Is there an adequate justification and rationale for the rules and for any regulation of the public embodied in the rules?
- B) Has the agency considered the economic effects of the rules upon those regulated, including small businesses and units of local government, school districts, and community college districts?
- C) Has the agency considered less costly alternatives to the rules?

- D) Has the agency considered the budgetary effects of the rules upon itself, other state agencies, and state revenue in general?
- E) Is the language of the rules simple and clear, so that the rules can be understood by the persons and groups which they will affect?
- F) Are the rules free of serious technical errors, redundancies and grammatical or typographical errors, which could affect the meaning of the rules?

3) Procedural

- A) Were the rules adopted in compliance with the Act?
- B) Were the rules adopted in compliance with the requirements of the Administrative Code Division (1 Ill. Adm. Code 100)?
- C) Were the rules adopted in compliance with any additional requirements which have been imposed on the agency by state or federal law?
- D) Were the rules adopted in compliance with the agency's own rules for the promulgation of rules?
- E) Was the agency responsive to public comments which have been made to the rules and to related requests for rulemaking?

4) Additional

- A) Has the agency shown that the rules are necessary? Has the agency shown that there is a public need for the regulation embodied in the rules?
- B) Are the rules accurate and current in relation to agency operations and programs?
- C) Are the rules free of overlaps and conflicts between requirements and between regulatory jurisdictions?

b) The Joint Committee will use the following criteria for its review of agency rules not promulgated pursuant to the Illinois Administrative Procedure Act:

- 1) Is the entity enforcing the policy in question an agency as defined in the Act?
- 2) Does the agency have the statutory authority for the policy?
- 3) Does the agency have rulemaking authority?
- 4) Does the policy comply with the statutory authority and legislative intent upon which it is based?
- 5) Does the policy comply with state and federal¹ constitutions, state and federal law, federal rules and regulations, and case law?
- 6) Is the policy included in any agency rule? Is the policy included in an internal agency document?
- 7) Does the policy meet the definition of rule found in the Act?

c) If the Joint Committee determines that one or more of the criteria enumerated in Subsection (a) or (b) of this Section are not met,

the Committee shall issue an objection or recommendation pursuant to Section 260.900 of this Part.

(Source: Amended at 10 Ill. Reg. 21687, effective May 1, 1987)

Section 260.800 Hearing by the Committee (Repealed)

(Source: Repealed at 10 Ill. Reg. 21687, effective May 1, 1987)

Section 260.900 Objection; Recommendation

a) Objection or Recommendation to Existing Rule

1) Objection

- A) If the Joint Committee finds that the rule does not meet one or more of the criteria in Section 260.700(a) of this Part, the Joint Committee shall object to the rule pursuant to Section 7.07 of the Act.
- B) If the Joint Committee objects to the rule, it shall certify that fact to the agency. Such certification will be sent to the agency in the form shown in Exhibit A of this Part within 5 working days after the objection is issued. The certification shall include a statement of the specific objection of the Joint Committee to the rules.
- C) Each statement of specific objections shall also be submitted to the Administrative Code Division for publication in the next available issue of the Illinois Register.

2) Recommendation

- A) If the Joint Committee determines that the rule is incomplete or inconsistent or does not meet one or more of the criteria in Section 260.700(a) of this Part, the Joint Committee shall recommend further action. Recommended actions include the promulgation of additional rules, the clarification of statutory authority through legislation to be introduced by the agency or the Joint Committee, and a recommendation to curtail an unauthorized practice.
- B) If the Joint Committee issues a recommendation concerning the rule, it shall certify that fact to the agency. Such certification will be sent to the agency in the form shown in Exhibit B of this Part within 5 working days after the recommendation is issued. The certification shall include a statement of the specific recommendation of the Joint Committee to the rule.
- C) Each statement of specific recommendation shall also be submitted to the Administrative Code Division for

publication in the next available issue of the Illinois Register.

b) Objection or Recommendation to Agency Rule Not Promulgated Pursuant to the Illinois Administrative Procedure Act

- 1) The Joint Committee shall issue an objection or recommendation to an agency rule not promulgated pursuant to the Illinois Administrative Procedure Act if the rule does not meet one or more of the criteria in Section 260.700(b) of this Part. Such objections or recommendations will be issued on the same bases as objections or recommendations issued to rules pursuant to Subsection (a) of this Section. The same procedures will be applied to such actions.

(Source: Amended at 10 Ill. Reg. 21687, effective May 1, 1987)

Section 260.950 Failure to Object or Issue Recommendation

THE FAILURE OF THE JOINT COMMITTEE TO ISSUE AN OBJECTION OR RECOMMENDATION TO AN EXISTING RULE OR AGENCY RULE NOT PROMULGATED PURSUANT TO THE ILLINOIS ADMINISTRATIVE PROCEDURE ACT SHALL NOT BE CONSTRUED TO IMPLY APPROVAL OF THE RULE OR POLICY BY THE JOINT COMMITTEE OR THE GENERAL ASSEMBLY. (Ill. Rev. Stat. 1985, ch. 127, par. 1007.04)

(Source: Added at 10 Ill. Reg. 21687, effective May 1, 1987)

Section 260.1000 Response to Objection

- a) THE AGENCY SHALL RESPOND TO AN OBJECTION WHICH IS ISSUED BY THE JOINT COMMITTEE WITHIN 90 DAYS AFTER RECEIPT OF THE STATEMENT OF SPECIFIC OBJECTIONS. The agency response shall address each of the specific objections stated by the Joint Committee. The agency response shall clearly state the nature of the response (agreement to amend, agreement to repeal, refusal to amend or repeal) and the rationale for the response. The response should be made in the manner shown in Exhibit C of this Part.
- b) The agency must respond to each objection of the Joint Committee in one of the following ways as required by Section 7.07 of the Act. Responses to a single objection cannot be combined (e.g. modify in part, refuse in part).
 - 1) Amend the rule to meet the Joint Committee's objection.
 - 2) Repeal the rule or discontinue the policy.
 - 3) Refuse to amend or repeal the rule or policy. A notice of refusal must also be submitted to the Administrative Code Division for publication in the Illinois Register if the agency responds in this manner.

- c) Responses shall be submitted to the Joint Committee, in writing, and shall be signed by the agency head.
- d) If the agency elects to amend or repeal the rule in response to an objection, it shall initiate rulemaking pursuant to Section 5.01 of the Act. The agency shall complete the rulemaking process within 180 days after the rulemaking is proposed in the Illinois Register.
- e) An amendment to meet the Joint Committee's objection must be limited to the issues raised in the Certification and Statement of Objection. A suggestion or comment made by a member of the Joint Committee does not authorize a substantive change unless the suggestion or comment is ratified by the Joint Committee through the issuance of a Certification and Statement of Objection to the rule.
- f) The failure of an agency to respond to an objection of the Joint Committee within 90 days of receipt of the objection shall be deemed to be a refusal to amend or repeal the rule pursuant to Section 7.07(g) of the Act.
- g) The failure of an agency to complete rulemaking which was proposed in response to an objection within 180 days after the publication of the notice of the rulemaking shall be deemed to be a refusal to amend or repeal the rule.

(Source: Amended at 10 Ill. Reg. 21687, effective May 1, 1987)

Section 260.1100 Response to Recommendation

- a) The agency should respond to a recommendation which is issued by the Joint Committee within 90 days after receipt of the statement of specific recommendations. The agency response should address each of the specific recommendations stated by the Joint Committee and should clearly state the nature (agreement to amend, agreement to repeal, refusal to amend or repeal) and rationale for the response. The response should be made in the manner shown in Exhibit D of this Part.
- b) The agency should respond to each Joint Committee recommendation for action in one of the following ways:
 - 1) Agree to pursue the action recommended by the Joint Committee.
 - 2) Refuse to pursue the action recommended by the Joint Committee.
- c) Responses should be submitted to the Joint Committee, in writing, and shall be signed by the agency head.
- d) The failure of an agency to respond to a recommendation of the Joint Committee within 90 days of receipt of the recommendation shall be deemed to be a refusal.

- e) The failure of an agency to complete rulemaking which was proposed in response to a recommendation within 180 days after the publication of the rulemaking shall be deemed to be a refusal to amend or repeal the rule.

(Source: Section repealed, new Section adopted at 10 Ill. Reg. 21687, effective May 1, 1987)

Section 260.1200 Analysis of Agency Response

- a) If the Joint Committee finds that the agency's actions do not remedy the objection, the Committee will notify the agency and submit a copy of such notification to the Administrative Code Division for publication in the next available issue of the Illinois Register pursuant to Section 7.07 of the Act. The notice will include a specific statement of the reasons the Joint Committee has determined that the objection has not been remedied.
- b) If the Joint Committee finds that the agency's actions do not remedy the recommendation, the Committee will notify the agency and submit a copy of such notification to the Administrative Code Division for publication in the next available issue of the Illinois Register. The notice will include a specific statement of the reasons the Joint Committee has determined the recommendation has not been remedied.
- c) If the agency fails to remedy an objection or recommendation, the Joint Committee may draft legislation to address the problems. Such legislation must be approved by a majority vote and may be introduced in either house of the General Assembly.

(Source: Section repealed, new Section adopted at 10 Ill. Reg. 21687, effective May 1, 1987)

Section 260.1300 Notice to Persons Making Complaint

The Director will notify the persons or groups making the complaint, in writing, of the results of the Joint Committee review and the agency response.

(Source: Amended at 10 Ill. Reg. 21687, effective May 1, 1987)

Section 260. Exhibit A Certification of Objection to Existing Rules or Policies

County of Sangamon)
State of Illinois)

I, (Director's name), Executive Director of the Joint Committee on Administrative Rules, being first duly sworn on oath, depose and state that, pursuant to Sections 7.04 and 7.07 of the Illinois Administrative Procedure Act, as amended, the Joint Committee on Administrative Rules, at its meeting on (meeting date), objected to the (agency name) rule(s) entitled or concerning (Heading of the Part, Code Citation), published in the (publication date) Illinois Register.

A statement of the Joint Committee's specific objection(s) accompanies this certification.

Please take notice that failure of the agency to respond to the Joint Committee's objection(s) to a rule within 90 days of receipt of this Certification of Objection shall constitute a refusal to amend or repeal the rule.

(Typewritten name)
Executive Director
Joint Committee on Administrative
Rules

Subscribed and sworn to before me this (date) day of (month), 19(year).

Notary Public

(Source: Added at 10 Ill. Reg. 21687, effective May 1, 1987)

Section 260.Exhibit B Certification of Recommendation to Existing Rules or Policies

County of Sangamon)

State of Illinois)

I, (Director's name), Executive Director of the Joint Committee on Administrative Rules, being first duly sworn on oath, depose and state that, pursuant to Sections 7.04 and 7.07 of the Illinois Administrative Procedure Act, as amended, the Joint Committee on Administrative Rules, at its meeting on (meeting date), issued a recommendation concerning the (agency name) rule(s) entitled or concerning (Heading of the Part, Code Citation), published in the (publication date) Illinois Register.

A statement of the Joint Committee's specific recommendation(s) accompanies this certification.

Please take notice that failure of the agency to respond to the Joint Committee's recommendation(s) to a rule within 90 days of receipt of this Certification of Recommendation shall constitute a refusal to amend or repeal the rule.

(Typewritten name)

Executive Director

Joint Committee on Administrative
Rules

Subscribed and sworn to before me this (date) day of (month), 19(year).

Notary Public

(Source: Added at 10 Ill. Reg. 21687, effective May 1, 1987)

Section 260.Exhibit C Agency Response to Joint Committee Objection to Existing Rules or Policies

Date: _____

Agency: _____

Heading of the Part: _____

Code Citation: _____

- Response (check one):
- ☐ Initiate rulemaking to repeal the rules to meet the Joint Committee's objection
 - ☐ Initiate rulemaking to amend the rules to meet the Joint Committee's objection
 - ☐ Refusal to initiate rulemaking to remedy the Joint Committee's objection

If rulemaking will be initiated, date notice of proposed rulemaking was, or is expected to be, published in the Illinois Register _____.

Agency Response to Specific Joint Committee Objections:
(Respond to each of the specific objections raised by the Joint Committee, indicating clearly the intended action of the agency in response to each recommendation and the rationale for such response. Use additional pages as necessary.)

Signature of Agency Head

(Source: Added at 10 Ill. Reg. 21687, effective May 1, 1987)

Section 260.Exhibit D Agency Response to Joint Committee Recommendation to Existing Rules or Policies

Date: _____

Agency: _____

Heading of the Part: _____

Code Citation: _____

Response (check one): _____ Agree to pursue the action
recommended by the Joint Committee

 _____ Refuse to pursue the action
recommended by the Joint Committee

If rulemaking will be initiated, date notice of proposed rulemaking was, or is expected to be, published in the Illinois Register _____.

Agency Response to Specific Joint Committee Recommendations:
(Respond to each of the specific objections raised by the Joint Committee, indicating clearly the intended action of the agency in response to each recommendation and the rationale for such response. Use additional pages as necessary.)

Signature of Agency Head

(Source: Added at 10 Ill. Reg. 21687, effective May 1, 1987)

Section 260.ILLUSTRATION H Certification of Objection to Existing Rules
(Repealed)

Source: Repealed at 10 Ill. Reg. 21687, effective May 1, 1987)

Section 260.ILLUSTRATION I Agency Response to Joint Committee Objection
to Existing Rules (Repealed)

(Source: Repealed at 10 Ill. Reg. 21687, effective May 1, 1987)

Section 260.ILLUSTRATION J Certification of Recommendation (Repealed)

(Source: Repealed at 10 Ill. Reg. 21687, effective May 1, 1987)

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